

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

PATRICK CALLIARI,)	
individually and as)	
Representative of the)	Case No. C08-1111MJP
Former Shareholders of GCI)	(Consolidated with
INVESTMENTS, INC., a)	C08-1112MJP)
Washington Corporation,)	
)	SEATTLE, WASHINGTON
Plaintiff,)	December 9, 2009
)	
v.)	
)	
SARGENTO FOODS, Inc.,)	
)	
)	
Defendant/Counterclaim)	
Plaintiff,)	
)	
v.)	
)	
PATRICK C. CALLIARI, et)	
al.,)	
)	
Counterclaim Defendants.)	

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE MARSHA J. PECHMAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: MR. MICHAEL GOLDFARB
MR. BRAD FISHER

For the Defendant: MR. ROBERT SULKIN
MR. DAVID LINEHAN

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2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXAMINATION INDEX

EXAMINATION BY		PAGE
LOU GENTINE	CONTINUED CROSS-EXAMINATION	5
	BY MR. SULKIN	
	REDIRECT EXAMINATION	41
	BY MR. GOLDFARB	
	RECROSS-EXAMINATION	90
	BY MR. SULKIN	
	REDIRECT EXAMINATION	105
	BY MR. GOLDFARB	
PATRICK CALLIARI	DIRECT EXAMINATION	125
	BY MR. GOLDFARB	
	CROSS-EXAMINATION	165
	BY MR. SULKIN	

EXHIBIT INDEX

EXHIBITS ADMITTED	PAGE
270	10
203	12
204	14
33	36
43	113
49	113
26	115
27	118
61	120
28	122
9	151
12	157
207	159
50	169
10	175
257	179

PROCEEDINGS

THE COURT: Good morning. Please be seated. A couple of things before we begin. Yesterday the plaintiffs used 172 minutes. The defense used 100. That leaves a balance for the plaintiff of 578, and for the defense, 668.

I understand that there is a stipulation we need to put on the record concerning a 10-2 decision by the jury, is that correct?

MR. SULKIN: Yes, your Honor.

THE COURT: Okay. Are both parties in agreement that we should advise the jury that a 10-2 decision is acceptable?

MR. GOLDFARB: Yes, your Honor.

THE COURT: Okay. Is there anything else we need to put on the record?

MR. GOLDFARB: Not from this side, your Honor.

MR. SULKIN: No, your Honor. But at some point we want to make an offer of proof on the memorandum opinion of the mediator. We can do it in our case or at a break.

THE COURT: Okay. Well, let's get our jury, please.

(Jury enters courtroom.)

THE COURT: Please be seated. Good morning. So did anybody look at the sculpture in front of the courthouse yesterday? Okay. What is it?

JUROR: It could be a lot of different things.

1 THE COURT: Anybody got a guess? No? Just a blob
2 pointing down, huh? There is one judge that says that it's a
3 black power fist. But, actually, in fact, it's a cedar seed.
4 And the building has several architectural parts to it that
5 emphasize our Northwest and the timber industry and the
6 forest here.

7 So it is a cedar seed falling to earth. And if you look
8 at the gates right at the bar, right behind Mr. Goldfarb, you
9 will see that there's some etchings there. And the etchings
10 there, if you look at that, it's supposed to be a forest.

11 And if you go from the bottom of the building, the
12 etchings have the forest floor. And at the top of the
13 building the etchings have the forest canopy. We're on 14,
14 so we're just kind of in the middle. But that's the
15 symbolism that you'll see.

16 On the top floor where the library is, all of the etchings
17 are repeated in a motif of timber, saws, and plant life. So
18 that's your art lesson for today. I'll give you another one
19 for tomorrow.

20 Okay. Let's turn our attention back to the case. And,
21 Mr. Gentine, could I please have you come back up again, and
22 we'll continue with our examination.

23 MR. SULKIN: May I begin, your Honor?

24 THE COURT: Yes, go ahead.

25 LOU GENTINE,

1 being previously duly sworn, the witness was recalled and
2 further testified as follows:

3 CONTINUED CROSS-EXAMINATION

4 BY MR. SULKIN:

5 Q Good morning, Mr. Gentine.

6 A Good morning.

7 Q I want to backtrack just a little bit, okay, and look at a
8 couple of documents. Let's start with Exhibit 201.

9 MR. SULKIN: Your Honor, the computer just crashed.

10 Q Okay. Mr. Gentine, this is Exhibit 201.

11 MR. SULKIN: Your Honor, I offer this. I think
12 there's been a ruling already.

13 THE COURT: If you turn on the overhead, we'll get a
14 clearer picture of it.

15 MR. GOLDFARB: Excuse me. Your Honor, I know it was
16 offered. I didn't hear if your Honor ruled yet. But the
17 understanding from yesterday is this would come with a
18 limiting instruction.

19 THE COURT: Yes. But let's take it off for just a
20 moment. You are going to offer it. Take it off the -- all
21 right. Go ahead and offer it.

22 MR. SULKIN: I offer 201, your Honor.

23 THE COURT: Okay. Ladies and gentlemen, 201 is going
24 to be admitted, but there is a limitation that comes with it.
25 The document is not offered for its truth, in other words,

1 what is outlined in it, but it is offered for the purpose of
2 notice.

3 So go ahead, Mr. Sulkin.

4 BY MR. SULKIN:

5 Q Yesterday you testified that you learned on or about July
6 25 or 26 of Mr. Calliari's offer to Unilever to reduce the
7 price by 4 to 5 cents in late July?

8 A Yes.

9 Q Is this the document through which you learned that?

10 A I think this would have to have been the document that I
11 learned, yeah. I'm not aware of any other document, yeah.

12 Q Take a look at the bottom e-mail. It's July 23, 2007.
13 You write: Patrick, can you send me the information-details
14 of our potential expanded role that we presented to Unilever?
15 It would help me be more aware of the various issues that
16 were addressed. Thanks. Lou.

17 Do you see that?

18 A Yeah.

19 Q At that point, on July 23rd, did you know what positions
20 Mr. Calliari had taken vis-a-vis the offer to Unilever?

21 A I don't recall that I knew anything about it prior to that
22 day.

23 Q And if you go to the middle e-mail, it's from Mr. Calliari
24 to you. Do you see that?

25 A Uh-huh.

1 Q I need a "yes" for the record, sir.

2 A Yes.

3 Q Okay. He writes you: I discussed the following with
4 Steve Boland, slash, Unilever on June 8th after a conference
5 call between George Hoff, Mike Gordy, Larry Riley, Tom Kyle,
6 Ray Wyandt, and myself.

7 If you could, can you just briefly tell us who each of
8 these individuals are in sort of one sentence?

9 A George Hoff is my chief financial officer. We talked
10 about him yesterday. Mike Gordy was in charge of new channel
11 development, was the person that was assigned to work with
12 Portionables during the integration of the company following
13 the acquisition.

14 Larry Riley was a Portionables controller. Tom Kyle and
15 Larry Riley reported directly to Patrick. And Ray Wyandt
16 also reported directly to Patrick. Tom Kyle was head of all
17 production. And Ray Wyandt was his primary. In fact, at
18 that point in time, he was VP of sales.

19 Q Okay. And if we go down the list, the fourth one says
20 conversion costs, 35 cents a pound, do you see that?

21 A Yes.

22 Q And it says: 4 pounds cost savings from current pricing?

23 A Uh-huh.

24 Q Is that the first time you learned of that number?

25 A Yes, I believe it was.

1 Q Is there anything in this e-mail in which the offer to
2 Unilever had anything relating to a minimum purchase by
3 Unilever, any boundaries, let alone 20 million pounds?

4 A No.

5 Q All right. If we could look at the top e-mail. This is
6 from Mr. Calliari to you. He says: Just talked to Steve
7 Boland.

8 Now, who is Mr. Boland?

9 A Steve Boland was the lead person at Unilever that we dealt
10 with. He would be the one that we would deal with if there
11 was anything to do with the contract, changes to the
12 contract, et cetera.

13 Q Okay. He said: Just talked to Steve Boland about the
14 increase volume project and meeting him next month. He is
15 looking for an additional 5 to 6 cents a pound off from the
16 35 cents we proposed last June.

17 Do you see that?

18 A Yes.

19 Q And so on July 26th, is it fair to say that it was the
20 first time you learned there would be a 35 cents a pound
21 offer to Unilever and a counter-proposal of 30 cents by
22 Unilever?

23 A Yeah.

24 MR. GOLDFARB: Objection, your Honor. Leading.

25 THE COURT: Sustained.

1 BY MR. SULKIN:

2 Q What did you learn by July 26th as to the various
3 positions concerning price, relating to a reduction in price
4 per pound at Unilever?

5 A Well, I learned that we had already offered 4 cents a
6 pound and that Steve Boland wanted more than that.

7 Q Mr. Calliari then goes on to say: Unilever has not
8 approved the capital expenditures for an in-house yet. Very
9 expensive, obviously. Then he says: So there is room for
10 negotiations, and Steve would like to discuss this project on
11 the phone next August 2nd at 4 o'clock.

12 Do you see that?

13 A Yes.

14 Q Did Mr. Calliari ever say to you that he did not want to
15 continue negotiating with Unilever at this time?

16 A No.

17 Q Yesterday you took us through how we got from these
18 numbers to the final numbers on August 16th. And I'm not
19 going to belabor that point. But I do want to then go to
20 Exhibit No. 270. If you could look at it. And without
21 talking about the contents of it, is this a document you
22 received, an e-mail from Mr. Calliari, dated August 16, 2007?

23 A Yes, it came. I was copied into an e-mail that he sent to
24 my assistant, Deb Preder.

25 Q And you were also CC'd on that?

1 A Yes, I was copied in.

2 Q And you would have seen it at the time?

3 A Yes.

4 Q And this was done as part of the business of Sargento?

5 A Yes.

6 MR. SULKIN: Your Honor, I offer 270.

7 MR. GOLDFARB: No objection.

8 THE COURT: 270 is admitted.

9 (Exhibit(s) 270 admitted.)

10 BY MR. SULKIN:

11 Q Why don't you blow up the bottom part, please. First, it
12 reads: Patrick, attached is the letter to Steve Boland at
13 Unilever. A copy should go to Mike Pusterla, supply manager,
14 contract manufacturing, at the same address shown for Steve
15 Boland. In addition, please send a copy to Lou for his
16 files. Mike also asked that I request that you provide me
17 confirmation when the letter is sent. If you have questions,
18 please let me know. Thanks. Debbie.

19 First, who is Debbie?

20 A Debbie is my personal assistant/secretary.

21 Q And why is she sending the letter? First, what letter is
22 this, to your understanding, that she's sending to
23 Mr. Calliari?

24 A This is the letter that has been referred to as the August
25 16th letter outlining our proposal to them.

1 Q And why is it that she's sending a letter to Mr. Calliari
2 in Washington to sign as opposed to Mr. Calliari typing it up
3 himself, so to speak?

4 A Well, because we had all worked together on defining what
5 the terms of the letter were. It was more convenient for
6 Debbie to do this. Debbie, as I mentioned, is my secretary.
7 Patrick honestly didn't have someone like that directly
8 attached to him.

9 He was very comfortable with Debbie putting it together.
10 Quite honestly, I think that Patrick would admit he's also
11 really not a detail type person, that he would not be the
12 best one to synthesize all of our discussions into that
13 letter.

14 Q Okay. Let's go down to the top part of the e-mail,
15 please. Mr. Calliari reports back: I sent an overnight
16 priority FedEx to Steve Boland and Mike Pusterla this
17 morning. Thanks.

18 Do you see that?

19 A Yes.

20 Q Did Mr. Calliari ever voice any concerns about sending
21 that August 16th letter?

22 A No, I don't believe he did. I think it shows that he
23 appreciated that we got the letter out to him. And he
24 thanked us for doing it, so.

25 Q Let's take a look, if you would, at Exhibit 203.

1 A What number?

2 Q 203. Without getting into the contents, what is this
3 document?

4 A This is a letter to Steve Boland, the gentleman I talked
5 about before, from Patrick Calliari, outlining the amendments
6 we were willing to make to the manufacturing agreement.

7 Q And did you see this letter before it went out?

8 A I absolutely did.

9 MR. SULKIN: Your Honor, I offer 203.

10 MR. GOLDFARB: No objection.

11 THE COURT: 203 will be admitted.

12 (Exhibit(s) 203 admitted.)

13 BY MR. SULKIN:

14 Q Mr. Gentine, this is the letter sent to Mr. Calliari,
15 correct?

16 A Yes.

17 Q And if we could just go to the second page and then the
18 third page.

19 THE COURT: Okay. Let's have a clarification.

20 MR. SULKIN: I will, your Honor, yes.

21 Q This letter is not the one that Mr. Calliari sent to
22 Unilever. This is an unsigned copy, is that right?

23 A Yes. This was the document that Deb transferred out to
24 him. And I think he had it copied onto his letterhead or
25 whatever. But he signed the letter out there.

1 Q Did you receive a copy, the signed copy, that Mr. Calliari
2 sent to Unilever?

3 A No, he never sent a copy of that back.

4 Q Okay. Let's look at this chart. I certainly don't want
5 you to explain it. But is this sort of the proposed -- just
6 briefly tell us what this chart is.

7 A Yeah, this chart basically laid out the old pricing, the
8 new pricing, as a comparison between the two, and looking at
9 various volume levels what the net price to Unilever would
10 be. If you went through it, it basically kind of lays out
11 what the savings were at varying levels for Unilever.

12 Q Okay. I want to show you a document that Mr. Goldfarb
13 showed you, Exhibit 20.

14 MR. SULKIN: And I believe this has been admitted,
15 your Honor.

16 A Exhibit 20, yes.

17 BY MR. SULKIN:

18 Q Briefly, tell us what is happening here. I'm more
19 concerned about that middle e-mail from Mr. Boland to you.

20 A This was a letter from Boland to me. And the
21 parenthetical remarks were our analysis of what he was
22 offering us as an alternative to the letter of August 16th.

23 Q Okay. Did you forward this e-mail with Unilever's sort of
24 concerns to Mr. Calliari?

25 A Yeah. I think I did it the next day.

1 Q Let's take a look at Exhibit 204. You'll notice -- first,
2 what is the middle e-mail? What is that?

3 A A difference between -- the one in the middle that says
4 from Mike Gordy to --

5 Q Let's do it another way. Let's first look at Exhibit 21,
6 okay? Let's do that. I think it will make it a little
7 easier. I'm sorry. What is Exhibit 21, without getting into
8 the contents?

9 A It's a Bellingham Cold Storage lease expiration. Did you
10 say Exhibit 21 or Exhibit 20?

11 Q I made a mistake. I'm sorry. Let's go back to 204. It
12 was my mistake. Let's go to 204. I misread that.

13 Is 204 an e-mail forwarding the proposal of January 29 to
14 Mr. Calliari?

15 A Yeah. Mike Gordy did that.

16 Q Was this done as part of the business of the company?

17 A Of course.

18 MR. SULKIN: Your Honor, I offer 204.

19 MR. GOLDFARB: No objection, your Honor.

20 THE COURT: 204 will be admitted.

21 (Exhibit(s) 204 admitted.)

22 BY MR. SULKIN:

23 Q And look at that middle e-mail, please. This is an e-mail
24 from Mr. Gordy to you explaining the differences between the
25 two proposals, is that right?

1 A Exactly.

2 Q And then the top e-mail, if we can go to that, please,
3 Mr. Gordy sends it to Mr. Calliari?

4 A Yeah. Yes.

5 Q I need a "yes."

6 Did you have discussions with Mr. Calliari in the
7 January-February time frame about Unilever? Was he kept up
8 to date?

9 A Yes, he was kept up to date.

10 Q Did he voice any concerns about the Unilever deal or say,
11 I don't want to do that?

12 A No, he didn't.

13 Q In that time period?

14 A No, he did not.

15 Q Did you have any -- let's go ahead and jump to March. Was
16 there a time when the company got together and you discussed
17 various issues?

18 A In early March we had a retreat for the executive team,
19 which includes all the division presidents and my direct
20 reports. It includes a couple other persons, the head of our
21 R&D area, as well as the individual that's in charge of new
22 product development for the company.

23 Q Where was this retreat held at?

24 A Actually, in addition, there were a couple additional
25 people invited, Mike McEvoy, who was not on the executive

1 team, and Karl Linck, who was our vice president of
2 engineering. Mike McEvoy reported to Mike Gordy. Karl Linck
3 reported to Lee McCollum, who reported to Mark Rhyan, who was
4 our executive VP of operations, who reported to me.

5 It was held at St. Germain, Wisconsin, which is a northern
6 resort area. We went up and actually utilized a lodge that
7 one of our board members has for business meetings he holds
8 for his company, totally unrelated to the business Sargento's
9 in, other than the fact that he's one of our board members.

10 We went up to St. Germain for strategic meetings,
11 particularly to look at how we were going to handle the
12 integration of Portionables following the earnout period,
13 which Patrick and everyone knew that after that point in time
14 we could work that any way we wanted to, after the earnout
15 period.

16 So that was the primary thing. Plus we had a lot of fun.
17 We went snowmobiling. Usually you do. It's kind of like
18 obviously your people go golfing. In Wisconsin, we go
19 snowmobiling. Same type of a thing. And we had a good time.

20 In addition, because of us all being together there, we
21 had the opportunity to sit down as a team relative to the
22 Unilever contract. Mike had asked --

23 Q I want to stop you just real quick and get a little bit of
24 background, if I may.

25 A Okay.

1 Q First, how long was this -- how long were you there at
2 St. Germain?

3 A We were there a couple nights, three days and two nights.

4 Q And was Mr. Calliari there?

5 A Yes. He arrived late the first night, as I recall. The
6 first night was just social.

7 Q And just ballpark, how many people are we talking about?

8 A We're probably talking 15, give or take.

9 Q Were there discussions about Unilever during this two- or
10 three-day period?

11 A Again, the whole team, I don't believe, ever had the
12 discussions, the whole executive team, the audience that was
13 up there. But we were able to break away. I believe it was
14 the last day, where Patrick and I sat down with Mike Gordy
15 and Mike McEvoy and George Hoff and further discussed the
16 Unilever transaction, how it was coming and where we were
17 going with it.

18 Q Did Mr. Calliari voice any disapproval with the proposal
19 that he had made to Unilever?

20 A No.

21 Q I want to jump to Exhibit 232.

22 MR. SULKIN: Which I believe has been admitted, your
23 Honor. That's the March 28th, 2008 letter from Mr. Weinstein
24 to Mr. Henkle.

25 MR. GOLDFARB: Actually, I believe that's 13. If I'm

1 not mistaken, this is the same document.

2 MR. SULKIN: You're right. Let's use 13.

3 THE WITNESS: What's that?

4 BY MR. SULKIN:

5 Q Let's use 13.

6 A Got it.

7 Q What was your reaction when you received this letter?

8 A I was absolutely shocked.

9 Q And why was that?

10 A Well, because as I stated yesterday, Patrick and I had had
11 a very open conversation network going back and forth. I
12 thought he was communicating very well with me, as well as I
13 was with him. It was a very comfortable relationship. I'm
14 sure that, you know, there was never an issue about him
15 getting to me, contacting me. The doors were always open
16 relative to the two of us.

17 So then suddenly out of the clear blue, with no indication
18 of anything happening in the past, he decides to lawyer up
19 and send me this letter about issues that he and
20 Mr. Ioannides as shareholders had with the way the
21 operational control or whatever was being handled at the
22 company.

23 Q Now, the jury has heard that there was a meeting March
24 26th in Bellingham between Mr. Ioannides and Mr. Calliari and
25 others.

1 A Uh-huh.

2 Q Were you aware that Mr. Calliari had been asked by
3 Mr. McEvoy to send something in writing to you?

4 A Yes. Apparently on that day, Patrick and Mr. Ioannides
5 kind of made the rounds up at Bellingham talking to a number
6 of different executives about what was going on. And when he
7 sat down --

8 Q Just so we're clear, you weren't there?

9 A I was not there.

10 MR. GOLDFARB: Excuse me. Move to strike the prior
11 answer as not responsive. It's lacking foundation.

12 THE COURT: Sustained. The jury will disregard the
13 last remark made about who was there. Let's begin again.

14 BY MR. SULKIN:

15 Q I just want to be clear with you.

16 A Uh-huh.

17 Q You understood the writing was coming. You were
18 surprised. Why were you surprised by the writing when you
19 got it?

20 A Well, I know that Mike McEvoy had suggested that he send
21 something to us in writing. And he told me that. But I was
22 just surprised that the writing came from an attorney as
23 opposed to himself or that Patrick didn't just call me and
24 say, Lou, these are the issues, even if you wanted me to send
25 them in writing.

1 Q And you and Patrick had a relationship where you talked to
2 each other on the phone?

3 A All the time.

4 Q Why don't you take a look at the second page of the
5 letter. Blow up the first full sentence for the jury. The
6 first full sentence reads: Sargento has excluded
7 Mr. Calliari from these discussions with Unilever, although
8 he negotiated the initial agreement with Unilever.

9 Do you see that?

10 A Yes.

11 Q Was that an accurate statement in your mind?

12 A Absolutely not, no.

13 Q Let's go down, if we could, to the paragraph with the
14 first bullet point. And if we could go up and catch the
15 phrase, "other examples include." Thank you.

16 Now, they also write: Other examples include the refusal
17 of Sargento to allow direct shipment of goods from the cold
18 storage facility of Bellingham Cold Storage, resulting in a
19 substantial loss.

20 To your knowledge, was that an accurate statement?

21 A That is absolutely an inaccurate statement.

22 Q Let's go down to the next bullet point. The apparent
23 decision by Sargento to implement an SAP System prior to the
24 end of the earnout period, which would be extremely
25 distracting to management and their ability to focus on the

1 operations of the business during this key period.

2 Please tell the jury what SAP is?

3 A I don't know what SAP stands for, but it's basically an
4 integrated software accounting system that basically handled
5 or had the ability to handle all aspects of a business. It
6 can be the financial statements. It can be asset listings.
7 It can be inventory. It can be production planning. It can
8 be warehouse planning. It can be loading product on trucks
9 and getting it shipped to customers.

10 It's just a total integration of all of the things that
11 you do in a business environment. And it's a system that we
12 had in place at Sargento Foods. And we had talked to Patrick
13 that we would want to get this implemented as soon as we
14 could at Portionables.

15 Q Take a look, if you would -- well, first, did you back off
16 SAP installation during the earnout period?

17 A Yes. In that case we said, well, you know, if it's going
18 to be a big issue for you, we can back off of this. In
19 reality, it wasn't a big issue to anyone meaningful up there.
20 But we backed off and said we'll wait.

21 Q In fact, let's take a look just quickly at Trial Exhibit
22 3, which is the stock purchase agreement. Just show the
23 first page, if you would. And if you could turn to Bates No.
24 637.

25 A Page what?

1 Q Bates 637. Are you there?

2 A Yes. Okay. Maybe I'm not there. Yeah, that's the one.

3 Q Schedule 2.14. This is a schedule attached to Trial
4 Exhibit 3 which lists various issues with conditions of
5 assets. Do you see that?

6 A Yes.

7 Q Could you read to the jury No. 2?

8 A The company believes that with continued growth the
9 software used for manufacturing processes, financing, and
10 accounting may not be sufficient to meet the needs of the sub
11 and will need to be replaced.

12 Q And that was something that was understood and agreed to
13 when the contracts were signed, right?

14 A Yes.

15 Q All right. And this relates to SAP?

16 A Well, that's what we were going to replace his -- the
17 antiquated systems of Portionables with. And that's not to
18 diminish Portionables' last system. It was probably adequate
19 for their time. But it certainly wasn't going to be adequate
20 working integrated with us, nor with the expected high
21 volumes of sales that we were going to get in the future.

22 Q In any event, you backed off SAP?

23 A Yep.

24 Q All right. What happened next?

25 A What happened next relative --

1 Q Did you get a call or contact Mr. Calliari after receipt
2 of this letter of March 28th?

3 A Yes. On April 2nd, I asked Patrick to give us a call,
4 George Hoff, my chief financial officer and us a call,
5 really, for us to be able to communicate with him or discuss
6 the contents of this letter or what was going on, quite
7 honestly.

8 Q Now, the letter, that is Exhibit 13, was from -- it was
9 from Mr. Calliari and Mr. Ioannides. You understood
10 Mr. Ioannides was one of the shareholders, is that right?

11 A Well, it was from the attorney writing on behalf of the
12 two of them, yeah. That's what it says.

13 Q Fair enough.

14 A Yes.

15 Q What did Mr. Calliari say to you in that call on April
16 2nd?

17 A Well, obviously we had some introductory things. And I
18 made it clear I was really confused on what was going on.
19 And he told me that he was conflicted relative to his role as
20 president and his role as shareholder representative and that
21 he just wasn't certain what he was going to be able to do.
22 And he wanted to protect -- you know, he wanted to protect
23 the interests of the shareholders as the shareholder
24 representative.

25 Q At this time did you know that Mr. Ioannides was unaware

1 that Unilever had threatened to self-manufacture?

2 A No, I was unaware. I assumed that Patrick Calliari must
3 have shared all the details of the proposed agreement with
4 Antoine.

5 Q At this time were you aware that Mr. Ioannides had not
6 been told that, under the proposed deal with Unilever, the
7 guaranteed level of production would be higher than under
8 their own projections?

9 MR. GOLDFARB: Leading, your Honor.

10 THE COURT: Overruled.

11 A Yeah. Again, you would have expected that if he looked at
12 the whole thing, he would have seen that there was now a
13 minimum of 20 million pounds, which was 20 million pounds
14 more of a minimum than they asked for.

15 BY MR. SULKIN:

16 Q Mr. Gentine, I focused my question. My question was
17 whether you knew this, okay?

18 A Whether I knew what?

19 Q Here it is. Let me try again, okay? Did you know during
20 that phone call on April 2nd that Mr. Ioannides did not know
21 that under the new deal with Unilever, Unilever had
22 guaranteed a minimum level of production that was higher than
23 the previous levels of production that had been projected?

24 A No.

25 Q Okay. Did you know in that call on April 2nd that

1 Mr. Ioannides did not know that the projected volumes under
2 the new proposed contract were going to result in higher
3 revenues to Portionables than under the existing contract?
4 Did you know that?

5 A No.

6 Q Did you believe in fact that Mr. Ioannides knew those
7 things?

8 A Well, I would expect that if Patrick had sat down with him
9 and discussed this contract because Mr. Antoine Ioannides was
10 concerned with it, that he would have provided him all the
11 details of the contract. So, yeah, I was surprised.
12 Actually, there was --

13 Q When did you first learn that Mr. Ioannides did not know
14 these things?

15 A I believe I first learned of this whenever Mr. Ioannides
16 was up here. I know he was deposed a month ago, but I
17 certainly didn't read his deposition.

18 Q Did you write a letter to Mr. Calliari?

19 A Following this phone call, I did write a letter to
20 Mr. Calliari. I believe it was on April 4th. I think it
21 went out two days after the phone call.

22 MR. SULKIN: Your Honor, Trial Exhibit 8 has been
23 admitted. That is the letter. Trial Exhibit 208 has the
24 attachment to it which we agreed to substitute but haven't
25 yet. May I use 208? However you want to do it. I'll do it

1 either way.

2 THE COURT: Why don't we just have Ms. Miller take
3 the attachment and put it in 208 -- excuse me -- put it in 8.

4 MR. SULKIN: May I approach, your Honor? Oh, she has
5 a copy there. I'm sorry.

6 THE COURT: Does that work?

7 MR. SULKIN: That's just fine.

8 THE WITNESS: So which one should I use, your Honor?

9 THE COURT: Use 8, with the attachment in 208.

10 THE WITNESS: I should move it?

11 THE COURT: Move it.

12 MR. SULKIN: Your Honor, may I proceed?

13 THE COURT: Go ahead.

14 BY MR. SULKIN:

15 Q Showing the first page of 208, is this the letter you sent
16 to Mr. Calliari?

17 A Yes, it is.

18 Q You wrote in the third line: In light of the March 28
19 letter from Joe Weinstein to Bob Henkle on which Sargento was
20 copied, asserting claims under the Portionables purchase
21 agreement, we need to know specifically and soon how you
22 intend to proceed on the proposed amendment to the Unilever
23 manufacturing agreement.

24 Do you see that?

25 A Yes.

1 Q Let me just go to the next page, page 2. You write at the
2 top: Please get back to me no later than Monday.

3 Do you see that?

4 A Yes.

5 Q Did Mr. Calliari get back to you by Monday?

6 A No, he did not.

7 Q Did he call you between April 4th and April 11th?

8 A No.

9 Q Did you try calling him?

10 A Several times.

11 Q And he did not return your calls?

12 A No.

13 Q Is it common for division heads at Sargento to not return
14 your calls?

15 A It's not common at all. Generally they know that if I
16 have a reason to call them, that they need to call, or if I
17 direct them to call me, they're calling me.

18 Q You write, six lines from the bottom on page 1: I can
19 understand, given the disappointing sales results to new
20 customers, why the former shareholders of Portionables might
21 be willing to take a bet the company approach to Unilever,
22 feeling that they have nothing to lose.

23 Did you talk to Mr. Calliari about disappointing sales
24 results?

25 A Yes.

1 Q And what did he say about that?

2 A What did he say about disappointing sales?

3 Q Yes.

4 A Well, he was disappointed about the sales results as well.

5 Q We can go now to -- please stay there. I'm sorry. It
6 says, last line: Not surprisingly, though, that is not the
7 deal we signed up for, which was intended to promote
8 long-term profitable growth in accordance with sound business
9 practices.

10 Do you see that?

11 A Yes.

12 Q Now, would you take a look again at Trial Exhibit 3, which
13 is your contract purchase agreement. And if you could turn
14 to Bates No. 611.

15 A Uh-huh.

16 Q Do you have that?

17 A Uh-huh.

18 Q This is a schedule to the purchase agreement, part of the
19 deal?

20 MR. GOLDFARB: Objection, your Honor.

21 Mischaracterizes the document. It's an exhibit, which is an
22 important distinction.

23 MR. SULKIN: Fair enough.

24 Q This is an exhibit to your agreement, your purchase
25 agreement, is it not, sir?

1 A Yes, it is.

2 Q All right. And it does refer to the company's business to
3 be operated in a manner consistent with the following. What
4 does A say?

5 A Long-term profitable growth.

6 Q Thank you. I'd like you to look at the third page of the
7 document, which is that chart.

8 A Are we back to Exhibit 8?

9 Q Yes.

10 A Got it.

11 Q Now, this was sent to Mr. Calliari?

12 A Yes.

13 Q Could you blow that up a little bit? Now, just to get
14 some background here, were you provided every e-mail that
15 related to the negotiations with Unilever?

16 A I'm sure I wasn't.

17 Q Was or was not?

18 A Was not.

19 Q Was Mr. Calliari on every e-mail relating to Unilever?

20 A I'm sure he wasn't as well.

21 MR. GOLDFARB: Objection, your Honor. Lack of
22 foundation.

23 MR. SULKIN: Let me rephrase.

24 THE COURT: Sustained. The jury will disregard the
25 last question and the last answer.

1 BY MR. SULKIN:

2 Q Do you believe that Mr. Calliari was on every e-mail
3 relating to Unilever?

4 A No, I would not believe that.

5 Q Okay. That said, do you believe he was involved in the
6 course of communications with Unilever?

7 A Yes.

8 Q Okay. What is this chart?

9 A This basically is a chart that lays out a lot of the
10 communications and a lot of the activities that went on from
11 the time Unilever contacted us relative to wanting relief on
12 their pricing that was in the manufacturing agreement on
13 March 26th, over a long period of time. It kind of tracks a
14 lot of things that happened during that period of time.

15 Q Did Mr. Calliari or his lawyers ever write back, taking
16 issue with the veracity of this chart?

17 A No.

18 Q So the next event that happens is you wrote a letter -- or
19 your lawyer wrote a letter on April 4th of '08. I'm sorry.
20 On April 11th, your lawyer wrote a letter to Mr. Calliari's
21 lawyers, is that correct?

22 A Yeah, because my letter was on, I believe, April 4th.
23 Yes, our lawyers wrote a letter a week later.

24 Q Had you heard anything in that time frame from
25 Mr. Calliari?

1 A No.

2 Q All right. Let's take a look at Exhibit No. 16.

3 A Uh-huh.

4 Q To orient us, April 4th, you wrote: You have a conflict.
5 Let us know if you can fix it.

6 Did he respond to that request?

7 A No.

8 Q All right. This is from your lawyer. Did you approve it
9 before it went out?

10 A I'm sure I did, yes.

11 Q In the second paragraph, the first page --

12 A Uh-huh.

13 Q -- there's a reference: In face-to-face meetings over
14 several days, only weeks before the Weinstein letter,
15 Mr. Calliari gave no indication that he was opposed to the
16 Unilever amendment being concluded.

17 Do you see that?

18 A Yes.

19 Q What does that refer to?

20 A That would be the meeting in St. Germain.

21 Q Let's go to the second page. In the middle of the page,
22 it's written: In these circumstances, Mr. Gentine is
23 Mr. Calliari's immediate supervisor with respect to his
24 employment. And Mr. Gentine and George Hoff, as directors of
25 Portionables, are directing Mr. Calliari as follows.

1 Do you see that?

2 A Yes.

3 Q All right. First, I want to just go through each of
4 those, if I may. Mr. Calliari shall take no further action
5 with respect to the discussions concerning the Unilever
6 amendment except after discussion and approval of such
7 actions by Mr. Gentine. Any such approval must be in
8 writing.

9 Were you stopping Mr. Calliari from even talking to
10 Unilever at this point?

11 A No.

12 Q What were you asking of your subordinate?

13 A I was asking him to get to me relative to making decisions
14 on this contract. He could still stay involved. But, again,
15 due to the fact that he said he was conflicted with his
16 shareholders -- he was also the president of the company
17 reporting to me. We were paying him a great deal of money to
18 be the president. And the president has to act in the best
19 favor of the company, what makes most sense. And I was
20 concerned because he was conflicted.

21 Q Would you have made the same request to any division
22 president, given these circumstances?

23 A Certainly in these kind of circumstances. But with any
24 significant action, there were many -- there's many actions
25 that my direct reports or indirect reports would be expected

1 to come to me for a final decision on. It happens all the
2 time.

3 Q No. 2 reads: Mr. Calliari shall promptly provide to
4 Mr. Gentine a written summary of all actions he has taken
5 with respect to the Unilever amendment from the summer of
6 2007 to the present and shall include with such summary
7 copies of all related documentation, analyses, memoranda and
8 all information in his possession, including correspondence
9 and drafts whether in hard copy or in e-mail form or from any
10 other medium.

11 Do you see that?

12 A Yes.

13 Q Why did you want that information?

14 A Well, I felt that in light of the situation after that
15 existed, I needed to have an absolute full understanding of
16 all the communications and all the issues that went back and
17 forth between Patrick Calliari and others relative to this
18 contract so at least I'd be able to totally understand his
19 point of view relative to the direction that he wished to
20 take.

21 Q In the past, had you asked other division heads on
22 certainly different subjects for reports and summaries even
23 though they may think it's an annoyance?

24 A All the time.

25 Q Let's look at Trial Exhibit 14.

1 MR. SULKIN: It's already been admitted, your Honor.

2 Q This is the May 23, 2008 letter from Mr. Calliari's person
3 at Foster Pepper, Mr. Henkle. Do you see that?

4 A Yes.

5 Q And I want to just make sure we all understand. The first
6 letter on behalf of Mr. Calliari came from the law firm of
7 Davis, Wright & Tremaine. To your understanding, who does
8 Davis, Wright & Tremaine represent?

9 A The shareholders.

10 Q And to your understanding, who was Foster Pepper --

11 A They were representing Patrick, I assume.

12 Q Now, had you had communications with Mr. Calliari prior to
13 receiving this letter?

14 A "Prior" is a long time.

15 Q Okay. Fair enough.

16 A I'm sorry.

17 Q It was a bad question. I don't want to get into the
18 contents of the communications. Between April 11th and May
19 23rd of '08, had you had communications with Mr. Calliari?

20 A Relative to the contents of this letter, I don't believe
21 so.

22 Q Did you have communications with him on other subjects?

23 A I think I had a conversation with him relative to a memo
24 Mike Gordy sent to the management team up at Bellingham.

25 Q We'll get to that.

1 A Okay.

2 Q All right. I want to just quickly go through portions of
3 this letter. On page 2 -- let's start at page 1. It starts
4 with Unilever negotiations. We'll just quickly touch on
5 that. Again, the claim was made that he was excluded. Was
6 that accurate?

7 A This is No. 1 at the bottom?

8 Q Yes. I don't want to go through the whole thing. But was
9 it an accurate statement that Mr. Calliari --

10 A I didn't see the "excluded" in what is up there. That's
11 all. I'm sorry. Is that actually on page 2?

12 Q Sorry. Go to page 2, middle of the page.

13 A In any case, it certainly was inaccurate that he had been
14 excluded.

15 Q I want to touch on this. Plaintiffs did not raise many of
16 these issues in the trial, so I'm not going to. But let's
17 just kind of touch base on a few of them. The Mike Gordy --
18 we're going to go to page No. 5, the top left. It talked
19 about Bellingham Cold Storage, the Mike Gordy memorandum of
20 April 30, 2008.

21 A Uh-huh.

22 Q Did you have a discussion with Mr. Calliari about that
23 memo on or about April 30th?

24 A Yeah, I believe I did, yes.

25 Q And tell us what he discussed with you concerning that

1 memo.

2 A He approved of the concept of the memo.

3 Q And what was the concept of the memo, generally?

4 A Well, by this time --

5 Q Let's do it this way. Let's take a look at Exhibit 33.

6 A Exhibit 33?

7 Q Yes. Is this the memo that's referred to in the May 23rd
8 letter?

9 A Yes, it is.

10 Q And this is part of Sargento's documents, is that right?

11 A Yes.

12 MR. SULKIN: Your Honor, I offer Exhibit 33.

13 MR. GOLDFARB: No objection.

14 THE COURT: 33 is admitted.

15 (Exhibit(s) 33 admitted.)

16 BY MR. SULKIN:

17 Q Could you explain what this memo is about?

18 A Well, by this period of time, since the attorneys -- since
19 the lawyering started with the letter from Patrick's
20 attorneys on March 28th, needless to say, the walls have
21 ears, and pretty soon we have the management team up in
22 Bellingham aware that there were issues going on here.

23 And, you know, that puts everyone in a position of: Who
24 am I supposed to talk to? Who am I not? I don't want to get
25 in trouble with my current boss, Patrick Calliari. I'm sure

1 I don't want to get in trouble with the people that bought
2 the company, et cetera, et cetera. So they're ending up in a
3 position of feeling conflicted as well, would be my
4 perspective.

5 So what this letter was intended to do was to say this:
6 If Patrick Calliari comes to you and wants any type of
7 information, please let us know and provide us copies of that
8 same kind of information; and, likewise, if we come to you
9 and want any kind of information or have any discussions with
10 this, please inform Patrick Calliari of this as well so that
11 everything is very -- I hate to use the word because it's
12 used too often -- very transparent within the organization,
13 that everybody would be aware of things and there wouldn't be
14 a feeling that somebody was talking behind closed doors or
15 whatever and potentially getting themselves in trouble with
16 one party or the other.

17 Q If you would take a look at the first full paragraph, the
18 last sentence.

19 A Yes.

20 Q It says: Lou and Patrick have discussed and are aware of
21 these requests in advance to this mailing.

22 Do you see that?

23 A Yes.

24 Q And was that accurate?

25 A Yes.

1 Q All right. Take a look at the second page of the
2 document, the second paragraph on the page.

3 A Our intent?

4 Q Yes. Could you read that, please.

5 A Our intent is to give the Patrick -- I don't know if "the"
6 -- it doesn't seem -- our intent is to the give the Patrick
7 and the Portionables' board equal access to information so
8 that if issues arise they will be in the best position to
9 deal with them.

10 Q Everyone was trying to create a fair playing field?

11 A Yes.

12 Q All right. Going back to page 5 of Exhibit 14, the May
13 23rd letter, we've talked already about SAP, right?

14 A Yeah, yes.

15 Q We haven't heard any evidence on No. 6 or 7 to this point.
16 At some point, Mr. Calliari and the company tried to mediate
17 their dispute? That's a yes or no question.

18 A Yes.

19 Q And the company participated and he participated?

20 A Yes.

21 Q Okay. I want to shift gears. We saw in the early
22 negotiation documents your request that Mr. Calliari be a
23 long-term member of the company. Do you recall that?

24 A Yes.

25 Q Didn't you want Mr. Calliari to be in a long-term

1 employment agreement?

2 A Absolutely.

3 Q Did you discuss that with him?

4 A Absolutely we discussed it with him.

5 Q And, first, tell us why you wanted him for a long-term
6 contract, and then we can get into some of those discussions.

7 A Again, it's sort of repetitive, I believe, of what I said
8 yesterday. But Mr. Calliari had brought this company up. He
9 had a vision of where the company could go and the exciting
10 opportunities that lay ahead that were certainly manifested
11 in his projections for greater sales and profitability going
12 forward.

13 He was intimately familiar with the production processes,
14 which he had told us was proprietary. So it was very
15 important to make sure that we had the lead guy who
16 understood how all of this worked. And he had connections
17 with many customers that would help get us to that level of
18 profitability.

19 And he had -- as any entrepreneur would have, he had great
20 passion for the business that he had developed prior to our
21 acquisition, which I would expect he would have, and he
22 should have.

23 Q How long of an employment contract did he sign?

24 A 68 months, five years, the end of 2012, plus there are
25 eight months in 2007.

1 Q And could he leave at any time under the contract?

2 A He could leave.

3 Q And did you try to put mechanisms in the contract to
4 incentivize him to stay?

5 A Absolutely.

6 Q Tell us what those are.

7 A First of all, we provided a lot of incentives relative to
8 the future long-term profitability of the company. He would
9 have an opportunity to share in that profitability going
10 forward over those -- following the earnout period.

11 Actually, that would have begun in the beginning of 2009. He
12 would have the opportunity to continue to share beyond his
13 salary, significantly beyond his salary, in the profitability
14 of the company.

15 And then, in addition, we provided him a signing and
16 retention bonus, which although he required that we pay it
17 all up front, it was another incentive for him to stay the
18 whole period.

19 Q Now, I want to be clear. Did you have specific
20 discussions with Mr. Calliari on this employment agreement?

21 A Sure.

22 Q Okay. Did you have discussions with him about the
23 retention bonus?

24 A Yes, that was part of the agreement.

25 Q And what was discussed about the retention bonus?

1 A Well, again, it was part of the package of what we were
2 offering him to have him stay with the company.

3 Q Did you pay Mr. Calliari money for him perhaps -- let me
4 rephrase.

5 Did you pay Mr. Calliari money for a noncompete in the
6 stock purchase agreement?

7 A Yes.

8 Q Did the million dollar bonus relate to the noncompete
9 provided for in the employment agreement?

10 A No.

11 MR. SULKIN: That's all I have, your Honor.

12 THE COURT: Any reexamination?

13 MR. GOLDFARB: Yes, your Honor.

14 REDIRECT EXAMINATION

15 BY MR. GOLDFARB:

16 Q Mr. Gentine, yesterday when you testified, you were asked
17 some questions about the negotiations with Mr. Calliari over
18 the stock purchase agreement and the employment agreement.
19 Do you recall that testimony?

20 A Yes, I do.

21 Q And what you said was that you remembered generally having
22 conversations with Mr. Calliari, isn't that correct?

23 A I don't recall the exact statement I made. But, yeah, I
24 had conversations with him.

25 Q But you are not able to recount today for us verbatim any

1 of the specific conversations that you had with Mr. Calliari
2 about either agreement, isn't that true, sir?

3 A I would not be able to recount verbatim conversations that
4 I had with Mr. Calliari two and a half years ago.

5 Q And in your conversations with Mr. Calliari specific to
6 this signing bonus, it is true, isn't it, that you never once
7 said that if he left the company sometime before the 68-month
8 term of the employment agreement, that you expected him to
9 return some or all of the signing bonus? Isn't that true?

10 A That is true.

11 Q Sir, let me ask you to look next at Exhibit 201.

12 A Yes.

13 Q This is one of the early e-mails that was addressing
14 issues about possible changes to the Unilever agreement. Do
15 you see that?

16 A Yes.

17 Q And some of these early discussions involved Unilever
18 potentially moving some of their production from Bellingham
19 to South Dakota, isn't that correct?

20 A Yeah, I think that's true, yeah, uh-huh.

21 Q And Mr. Calliari was indicating that if Unilever wanted to
22 expand their production into South Dakota, that that was
23 something that he might consider, isn't that also true?

24 A I would have to believe that was true, yeah. He would be
25 willing to consider that, because the South Dakota plant was

1 rather empty.

2 Q And if Unilever was willing to make a multi-million dollar
3 investment in the South Dakota plant, that was something that
4 Mr. Calliari thought might be advantageous both to the
5 shareholders and to Sargento, correct?

6 A I don't know if that's in the document, but it certainly
7 would be advantageous if a customer was going to make that
8 type of an investment.

9 Q My point, sir, is that the early negotiations with
10 Unilever weren't necessarily focused just on the existing
11 contract, but on possibly changing the agreement in some way
12 where the manufacturing would move in whole or in part to
13 South Dakota, correct?

14 A Yeah, that turned out to be an option that was discussed.

15 Q That was a different deal than what ultimately was
16 discussed later, isn't that true?

17 A It was a different deal than -- yes, because -- I assume
18 it was, because this was earlier in the process.

19 Q Now if you would go to 270, please.

20 A Got it.

21 Q This is the e-mail that you just looked at a couple of
22 moments ago --

23 A Yeah.

24 Q -- with the enclosure to Mr. Calliari, correct?

25 A Yes.

1 Q Okay. Now, the first thing is that this letter that was
2 currently sent to Unilever was of such importance that you
3 never actually obtained a copy of this signed document, isn't
4 that true?

5 A Patrick never sent me a copy.

6 Q And apparently you never asked him for one, isn't that
7 right?

8 A Well, I don't know if I did or not. I didn't do it in
9 writing.

10 Q All right. Well, you certainly don't have one, sir?

11 A Well, Patrick didn't always do what I asked him to do.

12 Q That's not my question, sir. My question is a simple one,
13 which is: Do you have a copy?

14 A I do not have a signed copy, or a copy of the signed copy.

15 Q Fair enough. And this Debbie identified here, you've told
16 us, is your assistant, correct?

17 A Yes.

18 Q And isn't it true, sir, that the letter that we've been
19 talking about today was actually drafted at your corporate
20 offices? The drafting of the letter occurred there?

21 A Yes.

22 Q And the drafting was done by, initially, Mike Gordy, isn't
23 that true?

24 A That, I don't remember.

25 Q Okay. It was then reviewed by you, all before it went to

1 Mr. Calliari, isn't that a fact?

2 A Because we wanted to make sure that it, again, synthesized
3 the discussions we had had with Mr. Calliari relative to what
4 we were going to offer Unilever.

5 Q Okay. Mr. Calliari didn't draft this letter. You and
6 Mr. Gordy and your team did in Milwaukee, right, or at your
7 corporate office?

8 A I believe we did it at our corporate offices, yes.

9 Q Now, throughout this time frame, Mr. Calliari had told you
10 that he did not believe that Unilever would self-manufacture,
11 isn't that correct?

12 A He believed that they would not self-manufacture.

13 Q And his position was they were bluffing, correct?

14 A Yes.

15 Q And he told you he thought that it would be a better
16 approach not to renegotiate the contract, that is true, isn't
17 it?

18 A No, I'm not certain I can exactly say that he didn't want
19 us to renegotiate the contract. Obviously we started to
20 renegotiate it before this letter. So I'm not certain what
21 you mean that he said that.

22 He did indicate that between his information -- and
23 whether he mentioned this or Mr. Ioannides or whatever, on
24 his close contacts with people that had previously worked for
25 Unilever, that they wouldn't self-manufacture. As it turned

1 out, of course, they did. And they are self-manufacturing in
2 Owensboro, Kentucky. So they were wrong.

3 Q Well, at the time that they were having the discussions
4 with Mr. Calliari, one of the things he told you was that,
5 even if they wanted to self-manufacture, it would take them
6 time to do that, isn't that correct?

7 A Well, of course it would take them time.

8 Q And he also told you that they made a 10 million dollar
9 investment in the Bellingham plant, isn't that correct?

10 A They had done that back in, I believe, 2004, whenever the
11 contract had begun, yeah.

12 Q All right. And after Mr. Calliari left, at some much
13 later time, Unilever has ultimately decided to
14 self-manufacture, am I right about that?

15 A No. I think they decided to self-manufacture long before
16 Patrick Calliari left. And they were -- I believe they were
17 self-manufacturing before the end of 2008 or early 2009. I'm
18 not certain when their plant started up running.

19 Q Well, is it a fact that today Unilever is
20 self-manufacturing and is phasing out or has ended buying
21 through Bellingham?

22 A It is true that they're self-manufacturing. And keep in
23 mind, they were always self-manufacturing, had the ability to
24 do that in their plant in Italy. I don't know what the
25 status of the Italian plant is anymore, but they do have the

1 capability of self-manufacturing in Owensboro, as I mentioned
2 before. But they are continuing to buy from us, because
3 there's now a contract in place that requires them to buy a
4 minimum of 20 million pounds, which wasn't in place before.

5 Q And you can't do anything more than speculate as to what
6 would have happened if Mr. Calliari had remained at
7 Portionables and handled Unilever in the manner he saw fit,
8 isn't that true?

9 A Speculate would seem a little incorrect, since I believe
10 that Unilever came to us, came to Patrick. And the initial
11 discussions were that they were willing to do more production
12 with us if the prices were lower. I guess, in that case, I
13 would assume that maybe they wouldn't be willing to do more
14 with us if the prices remained the same.

15 Q Is Unilever the only customer, in your many years of
16 experience, that you ever talked to that wanted a lower price
17 from you?

18 A Absolutely not. It happens all the time. And it happened
19 with Patrick, and because of that, he lost his first major
20 significant customer, General Mills, because he wasn't
21 willing to negotiate down to a price acceptable to his
22 customer.

23 Q Well, you know, what goes on in particular transactions is
24 what goes on in transactions. But customers will come up
25 with every possible reason and excuse for you to lower your

1 price, right?

2 A Time to time. Not all customers do that. You have
3 different relationships with different customers, different
4 cultural styles of different businesses. And if they're
5 making a fair profit and they're happy with the service and
6 the product they're receiving, we don't always get requests
7 from customers to reduce prices.

8 Q All right. But it happens frequently?

9 A It happens. It's part of the business world.
10 Occasionally we go to our suppliers and ask for a lower price
11 if there's a way to get it.

12 Q Okay. And how and what prices you should set is a matter
13 of business judgment, right?

14 A Yes. In the end, you have to make a decision on what
15 those prices should be.

16 Q And in this particular case, Mr. Calliari had years of
17 experience dealing with Unilever, correct?

18 A Yes, he did.

19 Q And Mr. Ioannides had extensive experience dealing with
20 Unilever and had done business with them for years in Europe,
21 correct?

22 A Yeah, but the business -- I don't believe the business in
23 the United States, as large as Unilever is, would be
24 operationally controlled in any form or fashion by the people
25 over in Europe. So I think that's probably somewhat

1 meaningless.

2 Q Well, that was your business judgment. But the business
3 judgment of both Mr. Calliari and Mr. Ioannides was that
4 Unilever was bluffing about the price, correct?

5 A Going back to it, Mr. Ioannides never met Steve Boland.
6 He hadn't sold to Unilever since 2002. He had a friend that
7 lived in his back yard that he had dinner with occasionally.
8 And I don't think that he would have been in any position to
9 make a judgment.

10 Relative to Patrick Calliari, yeah, his belief was you
11 don't have to do that. And from our viewpoint, that was a
12 belief he had with General Mills. And it cost the company
13 dearly. So we weren't comfortable with his judgment in that
14 regard.

15 Q So what we have here by the time we get to April and May
16 of 2008 is a disagreement in business judgment between you
17 and your team on one side and Mr. Calliari and Mr. Ioannides
18 on the other, correct? They thought one thing; you thought
19 something different?

20 A We had a lot more than that. We have a transaction which
21 was moving along that Mr. Calliari never complained about,
22 never indicated that he had lost operational control, none of
23 those things were happening. And he had signed the letter
24 that basically laid out the agreement that we signed the
25 following year.

1 Q Again, sir, just focus on April and May of 2008. There
2 was a disagreement between you and your team and
3 Mr. Calliari. There was one business judgment on your side
4 about what might happen and what was best to do and a
5 business decision or judgment on the other side that differed
6 from what you thought. That's true, isn't it?

7 A Again, I would have to say, no, that's not exactly true,
8 because interweaved in that was a shareholder who was putting
9 pressure on Patrick. And I think his judgment -- in fact, he
10 said his judgment was conflicted. He didn't know what to do
11 because he had shareholder issues and he had company issues.

12 And he has a fiduciary right, a fiduciary responsibility
13 as the president of Portionables to act in the best interests
14 of the company. And we believed he wasn't able to do that.

15 Q Well, you knew from the moment that Mr. Calliari came on
16 board under the employment agreement and under the stock
17 purchase agreement, you knew that he was the shareholder
18 representative, correct?

19 A Absolutely.

20 Q And you knew from the very beginning that he was going to
21 represent the shareholders' interests in the transaction,
22 correct?

23 A He was going to be the representative of the shareholders
24 so that the shareholders would be cognizant, I suppose, of
25 what was going on.

1 Q And --

2 A But he certainly -- as the president of the company, we
3 weren't paying him \$450,000 a year to represent the
4 shareholders' interests.

5 Q Well, actually, he had full operational control of the
6 company to exercise the interests of the shareholders to
7 maximize the earnout. That was all a transaction, wasn't it,
8 sir?

9 A No, he did not have full operational control. He had
10 operational control, limited by his role as a division
11 president of the company.

12 Q All right. Let's look at 204, please. We looked at this
13 before. This is the e-mail from Mr. Gordy, forwarded to
14 Mr. Calliari. Do you recall that testimony?

15 A Yes.

16 Q And what's indicated, by the time this is forwarded to
17 Mr. Calliari, apparently yourself, Mr. Hoff, and Mr. Gordy
18 already have a call set with Unilever, isn't that correct?

19 A We have a call set with Steve Boland. Steve Boland, it
20 appears, preferred to talk to me as the CEO of Sargento. I
21 can't control what a customer wants to do. But it was
22 typical of what he would do. He would call me.

23 Q Well, again --

24 A Or request me to call him.

25 Q But you don't have to take that call. You can say:

1 Mr. Calliari is in charge of this negotiation, call him. But
2 that's not what happened here, is it?

3 A That is also not what a prudent businessman would do when
4 a customer is calling.

5 Q So you went ahead and took over the negotiations --

6 A I didn't take over the negotiations. I was willing to
7 accept a call and listen to Steve Boland.

8 Q And then you had a number of calls and e-mails with
9 Mr. Boland that went from January through actually July, when
10 you finally got the amendment signed, isn't that true?

11 A I talked with Mr. Boland in 2007 as well. He wished to
12 talk to me. I'm sure he saw where the company was going.
13 And he was more concerned about Sargento's position, I'm
14 sure, than probably Mr. Calliari.

15 It doesn't mean we didn't keep Mr. Calliari totally
16 involved. And it doesn't mean that Mr. Calliari wasn't
17 generally involved or knowledgeable about the fact that I
18 might be calling Mr. Boland or he might be calling me.

19 Q Mr. Calliari was not in a single phone call with
20 Mr. Boland in 2008; that's a fact, isn't it?

21 A I can't say whether he was or not. But if you say it's a
22 fact, it may have been a fact. But it may have also been
23 related to what the wishes were of our customer.

24 Q Well, Mr. Calliari wasn't in any phone call with you and
25 Mr. Boland in 2008; you know that much, don't you?

1 A I can't --

2 (Interruption in proceedings.)

3 THE COURT: Ladies and gentlemen, this is going to
4 continue, which means that we cannot continue with the trial.
5 And I assure you that if they tell you that you are on a safe
6 floor, they don't want us to move. So how would you like to
7 stand up and take a stretch while we get through this?

8 (Jurors leave courtroom.)

9 THE COURT: Counsel, I'm going to get off the bench.
10 The jurors are sequestered. I don't want anybody leaving the
11 floor. In other words, don't get on the elevators.

12 (Brief recess.)

13 THE COURT: All right. Let's bring them back out and
14 let's start again here.

15 (Jury enters courtroom.)

16 THE COURT: Please be seated. Sorry about that.
17 Let's turn our attention back to the case at hand.

18 Mr. Goldfarb, go ahead.

19 MR. GOLDFARB: Thank you, your Honor.

20 Q Mr. Gentine, if I could get you to turn to Exhibit 203,
21 please.

22 A Yes.

23 Q And this again is the letter that Mr. Calliari -- that was
24 drafted by your office and sent by Mr. Calliari in August of
25 2007, correct?

1 A Yes.

2 Q And on the second page, sir, Mr. Calliari and you have
3 indicated what the terms of this proposed offer was. I've
4 highlighted a section that talks about tonnage and
5 exclusivity and duration. Do you see that?

6 A Yes.

7 Q And what this letter is looking for is a minimum tonnage
8 guarantee, correct?

9 A Yes.

10 Q A five-year contract, correct?

11 A Yes.

12 Q And exclusivity for North American production, correct?

13 A Yes.

14 Q All right. And the term would have started when? At the
15 beginning of the next year?

16 A You know, without looking at it, I thought it was the
17 beginning of 2008. But it might have been sooner than that.
18 I don't recall.

19 Q If it was the beginning of 2008, the five-year term would
20 take it then to 2013, correct?

21 A It would take it to the end of 2012, I believe. 8, 9, 10,
22 11, yeah, 12, the end of '12.

23 Q The end of 2012?

24 A Yes.

25 Q Sir, if you would turn to Exhibit 59.

1 A Yep. Yes.

2 Q And on the second page, sir -- I'm sorry. Just so we're
3 all clear, 59 is the actual signed amendment that was signed
4 after Mr. Calliari left that we looked at yesterday, correct?

5 A Yes.

6 Q Okay. And on the second page under term --

7 A Yeah, uh-huh.

8 Q -- the term that was ultimately agreed to by Sargento
9 after Mr. Calliari left was different from what was in
10 Mr. Calliari's letter, correct?

11 A Yes. The term was reduced by one year.

12 Q And in addition to that, the exclusivity provisions were
13 different as well, weren't they?

14 A I don't recall. The exclusivity provisions went back and
15 forth. They wanted to be able to obviously produce product,
16 as I recall, in their Owensboro facility. They wanted to be
17 able to self-manufacture. But other than that, I'm not aware
18 of any substantial changes to it.

19 Q Well, Mr. Calliari's proposal had asked for North American
20 exclusivity, isn't that correct?

21 A Yes.

22 Q And what was ultimately signed allowed Unilever to
23 manufacture for itself, isn't that correct?

24 A Purchaser shall be entitled to acquire a product from
25 foreign affiliate or otherwise manufacture a product

1 themselves.

2 Q Isn't that right?

3 A Yes. They would not have signed it otherwise.

4 Q Right. But Mr. Calliari's proposal called for North
5 American exclusivity, period, didn't it?

6 A Yes, it did. But what we ended up getting was far better
7 than not having any exclusivity at all.

8 Q But what this still allows Unilever to do anytime it wants
9 is self-manufacture product, correct?

10 A After they give us 20 million pounds of production. They
11 had to give us a minimum of 20 million pounds of production a
12 year. Above that level, they could self-manufacture.

13 Q And my point, sir, is simply this: This proposal that was
14 ultimately signed allowed Unilever to self-manufacture. The
15 letter that was drafted by your office and signed by
16 Mr. Calliari some eight or nine months before this called for
17 North American exclusivity, period. That's the difference,
18 isn't it?

19 A Well, I'm not certain, Mr. Goldfarb, because they had the
20 ability to self-manufacture in the 2004 agreement as well.
21 So it was probably -- I don't know that it wasn't assumed
22 that they would be able to self-manufacture.

23 Q Well, we just looked at it, sir. That's not what
24 Mr. Calliari's letter said, is it? His letter said that
25 there would be North American exclusivity. That's the one

1 that he signed, isn't that right?

2 A Yes. But, again, I believe we were talking about
3 exclusivity from other manufacturers of the product. And as
4 I mentioned earlier, there were other people that were
5 capable of producing a very, very similar product for
6 Unilever.

7 Q This is the August 2007 letter. It says, exclusivity for
8 North American production, does it not?

9 A It says: Include a continuance of our exclusivity for
10 North American production.

11 Q Right.

12 A Which I think, if you were looking at their former
13 contract, they did have the ability to produce product
14 themselves. I don't have the details of that. But I think
15 that's what that means.

16 Q Let me ask you to look next at Exhibit 13, please.
17 Exhibit 13, we've talked about a couple of times, including
18 you discussed it earlier this morning. You said that you
19 were surprised that Mr. Calliari had his attorneys write your
20 attorneys. Do you recall that?

21 A Yes.

22 Q But there's certainly nothing wrong with that, is there?

23 A Well, again, it's just a matter of relationships. But he
24 certainly would have the absolute right to have his attorneys
25 communicate with me on an issue.

1 Q All right. And you certainly knew that he was taking
2 these issues seriously when a letter came from his counsel,
3 isn't that also true?

4 A He was certainly taking a position on it, yeah.

5 Q And at the top of the second page of this letter,
6 Mr. Sulkin asked you about this this morning, about the
7 exclusion of Mr. Calliari from the negotiations with
8 Unilever. It's a fact, isn't it, that in the spring and
9 summer of 2008, calls were being scheduled with Unilever
10 without telling Mr. Calliari, correct?

11 A I don't know that we were not telling Mr. Calliari. But,
12 again, we talked earlier that Steve Boland wanted us to call
13 him. He was the customer. It's crazy. The customer is not
14 always right, but he's always the customer.

15 Q And it's also true, isn't it, that e-mails were being sent
16 by you and others at Sargento to Mr. Boland during the spring
17 and summer of 2008?

18 A I'm sure there were e-mails going back and forth between
19 Sargento people and Mr. Boland during that period of time.

20 Q And you never pre-cleared any e-mail that you sent to
21 Mr. Boland about Unilever in 2008 with Mr. Calliari, did you?

22 A Mr. Calliari worked for me. I wouldn't normally feel I
23 have to pre-clear something with Mr. Calliari.

24 Q So the answer to my question is, no, you never went to him
25 and said: You know, Portionables is under your operational

1 control. This is an e-mail I would like to send. Is this
2 approved by you?

3 You never did that, correct?

4 A Well, I don't know that I didn't discuss the content of
5 e-mails with him prior to sending them. I may have done
6 that. I'm sure that after the lawyering letter landed on our
7 desk on March 28th, obviously we had a lot of issues. He was
8 conflicted, et cetera, et cetera.

9 So there may have been times where I sent something
10 without showing it to him. But, actually, he wasn't even
11 returning my calls. It was hard to communicate with him at
12 that time.

13 Q Looking at the middle of this letter, sir --

14 A Sure.

15 Q -- about the direct shipment, you were generally aware
16 that Mr. Calliari had an idea that he would like to direct
17 ship out of the Bellingham Cold Storage facility, correct?

18 A Yes, he had a concept about direct shipping, a mental
19 concept.

20 Q And the idea of that concept was that they could save
21 money with the landlord if they didn't put things in and out
22 of the Bellingham Cold Storage warehouse. You are aware of
23 that, correct?

24 A Yeah. Again, we're looking at it in a vacuum, because he
25 couldn't do that based on the contract that we had with

1 Bellingham Cold Storage. He would like to do it.

2 Q Hold on, sir. I'm just asking if that was a concept.

3 A Well, I'm just saying yes.

4 Q Okay. Now, this was another area where there was a
5 disagreement concerning business judgment, isn't that right?
6 Mr. Calliari thought under the lease he was entitled to
7 direct ship; that's true, isn't it? He believed that?

8 A Yes, apparently he believed he could do that.

9 Q And so did Mr. McEvoy, by the way, didn't he, that at
10 least technically permitted direct shipping? Isn't that
11 true?

12 A I don't recall the views of Mr. McEvoy in that regard.

13 Q Mr. McEvoy was the one that was much closer to that
14 situation than yourself, isn't that correct?

15 A He was the one that actually Patrick Calliari asked for
16 help in negotiating this arrangement with Bellingham Cold
17 Storage. And first, I think, he asked for help from George
18 Hoff, our chief financial officer. And then we provided,
19 with his approval, Mike McEvoy as well, because he had an
20 adverse relationship with the CEO of Bellingham Cold Storage.
21 He felt it was better that somebody else get involved.

22 But his own production manager, Tom Kyle, was actually
23 leading the project for Pat Calliari. And Tom Kyle gave Pat
24 Calliari also his opinion that direct ship was not a good
25 idea.

1 In the end, after Calliari decided not to do that, he
2 basically told Mike McEvoy to sign a contract, which we
3 helped develop with Tom Kyle, that resulted in a savings of
4 approximately \$130,000 a year.

5 And it was without any of the logistical issues, product
6 quality issues, or potential lawsuit issues with Bellingham
7 Cold Storage that we knew would develop if we pursued that
8 direct ship. Even though there was a chance we could do it,
9 we were putting a great deal of business in harm's way. And
10 his own production manager felt it was inappropriate to
11 direct ship.

12 Q Let me try to refocus you on my question. Mr. Calliari
13 had an idea for direct shipping that he wanted to pursue;
14 that's true, isn't it?

15 A Yes. I said that before.

16 Q And your company had a contrary view and thought direct
17 shipping was not a good idea; that's also true, isn't it?

18 A Our company and his production manager, who reported
19 directly to him, that he asked to investigate the concept and
20 see whether it would work, both of us felt that it was not a
21 good idea.

22 Q Okay. Mr. Calliari thought that it was an appropriate way
23 to proceed, right?

24 A Yes, he did.

25 Q And there was a difference of business judgment again, not

1 getting to the merits of it at this point, but just there was
2 a disagreement about what was the best way to proceed between
3 your company on one hand and Mr. Calliari on the other;
4 that's true, isn't it?

5 MR. SULKIN: Your Honor, I'd just object as to time.
6 There's testimony that Mr. Calliari signed off on the
7 agreement. The question is, at what point in time are we
8 talking about?

9 MR. GOLDFARB: I'll rephrase, your Honor.

10 Q What happened was that Mr. Calliari ultimately gave up on
11 direct shipping because it had taken so long in the
12 discussions between Bellingham Cold Storage and your people
13 that there was no way to implement it and still save money
14 under the earnout, isn't that true?

15 A No, I don't think that's true. I think when his direct
16 subordinate, Tom Kyle, also believed that direct ship was not
17 an advisable way to do it, Patrick Calliari, I guess, saw the
18 light and said, we're not going to move forward. And we
19 ended up signing an agreement that gave us some savings,
20 which by the way, accrued to the benefit of the shareholders
21 at a ratio of 6 to 1.

22 Q Is that something that Mr. Kyle told you?

23 A What's that?

24 Q Did Mr. Kyle tell you that?

25 A No. I believe that probably came from either Mr. Hoff or

1 Mr. McEvoy.

2 Q Let me ask you to look next at Exhibit 1. You were asked
3 some questions about this yesterday. Do you recall that this
4 is your letter to Mr. Calliari before the contract was
5 signed, talking about the transaction? Do you recall that?

6 A Yes.

7 Q Your letter used the words "primary operational control,"
8 isn't that right?

9 A Yes. It was a reduction from the former concept proffered
10 by Bill Beard, which was full operational control and the
11 duties of CEO.

12 Q And the words "primary operational control" don't exist
13 anywhere in either the employment agreement or the stock
14 purchase agreement, isn't that correct?

15 A Yeah. It ended up that we ended up settling at
16 operational control and the role as a division president,
17 duties, responsibilities, and obligations.

18 Q And I don't want to reargue all that language with you
19 again today, sir.

20 A Okay.

21 Q But the deal that the parties made ultimately is the exact
22 verbiage that's set forth in the stock purchase agreement and
23 the employment agreement, correct?

24 A Right. And it wasn't primary operational control.

25 Q And you didn't get the words "primary operational control"

1 into either agreement, did you?

2 A No.

3 Q I think you were asked some questions about Mr. Calliari's
4 incentives under the employment agreement. If you could go
5 to Exhibit 2 briefly. On page 3, sir, there is a section
6 headed "incentive compensation." This also contains a fairly
7 complex formula. I'm wondering if you could translate this
8 for us into basic English about what the incentive
9 compensation was?

10 A At this point I have not looked at this paragraph for a
11 long, long time. So I'm not certain that I would be able to
12 do it total justice. But, in effect, after 2008, there was
13 an opportunity for the executive to share in 5 percent of the
14 profit number. I don't -- I've got to see what the number
15 was. Let me just see. Oh, 5 percent of Portionables' pretax
16 profit. Thus it became known as PPP.

17 Q And to recap this, sir, what happened was in the
18 negotiations between yourself and Mr. Calliari, one of the
19 things he told you was that if the company was going to be
20 sold, he wanted to retain an interest in it, isn't that
21 correct?

22 A When he sold the company to us?

23 Q Yes.

24 A He wanted to retain an ability to continue to benefit from
25 the growth of the company over and above that.

1 Q The French company had, as you understood it, offered
2 Mr. Calliari 5 percent of the acquired entity, isn't that
3 true?

4 A Again, I'm not 100 percent certain. But I'm sure if we go
5 to the document and you are saying it's true, that's probably
6 what it was.

7 Q That rings a bell, though, doesn't it, that the French
8 company would provide some equity to Mr. Calliari?

9 A Yes, uh-huh.

10 Q And you are not a public company. You didn't have stock
11 that was available to Mr. Calliari. So you had to structure
12 something that was like stock, but wasn't, correct? And
13 that's what this section was about?

14 A To some degree. This was basically -- I would have looked
15 at this more as a bonus to Mr. Calliari for ongoing
16 performance. And, again, I made a mistake. It wasn't 5
17 percent of Portionables' pretax profit. It was 5 percent of
18 their pretax profits over and above, I believe, the pretax
19 profit earned during the earnout period, because he was
20 already benefiting from that.

21 But I think I would have looked at this, I believe, more
22 as a bonus; that he would be paid a bonus of that amount over
23 the period of his contract following the earnout.

24 Q Okay. So this is another example where the employment
25 agreement is distinguishing between the earnout time period

1 and things that would happen afterwards, isn't that correct?

2 A Yes.

3 Q And this section of the agreement only kicks in after
4 December 31, 2008, isn't that right?

5 A I believe so.

6 Q Okay. And if the company performed well after December
7 31, 2008, there's some potential for Mr. Calliari to receive
8 significant payments under this provision, isn't that right?

9 A Well, yes. If he had hit the numbers he was talking
10 about, it could be significant. He was projecting numbers
11 that were significantly higher. This would be a wonderful
12 bonus.

13 Q So he would have to be at the company after December 31,
14 2008, in order to recover this, correct?

15 A He would have to be working for the company, yes. I
16 believe he would, yes.

17 Q So by resigning before then, he shot himself in the foot
18 in terms of recovering anything under this provision, isn't
19 that right?

20 A Yes, I believe so.

21 Q It was against his personal interest to do that, right?
22 If he had stayed, he might have qualified for this?

23 A Well, I don't think that he did it because he was going to
24 lose the incentive compensation. So, no, I guess I can't say
25 that. He obviously felt that there was an opportunity for

1 him to make more if he could convince somebody along the way
2 that he should have some other contingent payment created for
3 his benefit.

4 Q This provision, you can agree with me, provided an
5 incentive for Mr. Calliari to stay past 2008, right?

6 A Yes, which is what we wanted him to do.

7 Q And in addition to the incentive compensation, there is a
8 another provision called a value award that's different,
9 isn't that right?

10 A Yes.

11 Q And he had to stay through 2009 in order to qualify for
12 that, correct?

13 A Yes, that's what it says.

14 Q And I don't want you to go through this in terrible
15 detail, but can you explain to the jury in, again, basic
16 terms what the value award was?

17 A Quite honestly, I would have a heck of a time today being
18 real specific on it. So I'm glad you are not asking me to do
19 that. But I think basically it was a way to provide him a --
20 if the value of the company was determined in some way or
21 fashion according to this thing went up at the end of the
22 earnout period and when he left the company, that he would
23 share in 5 percent of that value. I suspect that's kind of
24 what that was about.

25 Q So kind of like if you owned Microsoft stock and it went

1 up, you would share in that value as it went up?

2 A Sort of, except I suspect in this case this was an
3 ordinary income. It wasn't a capital gain that you would
4 receive from a stock.

5 Q Right. But in terms of the idea, it was that, if the
6 company grew, he would grow with it?

7 A Yes.

8 Q And this was another incentive for him to stay past 2009,
9 correct?

10 A Yes, it was.

11 Q Sir, if you would look at page 8. Looking at section 70,
12 which relates to termination by executive, under that
13 provision, if Mr. Calliari were to voluntarily terminate
14 after December 31, 2009, he would still receive the value
15 award, isn't that correct?

16 A That's what it says, yes.

17 Q I would like you to turn to the testimony that you gave
18 this morning about the phone call that you had with
19 Mr. Calliari on April 2nd of 2008. This is the call you
20 talked about that was several days after receiving the letter
21 from the attorneys. Do you recall that?

22 A Yes, with George Hoff. George Hoff and I had called.

23 Q In that call, sir, isn't it true that Mr. Calliari told
24 you that Antoine Ioannides has over 25 years of dealing with
25 Unilever and that Mr. Calliari had over 20 years of dealing

1 with Unilever?

2 A I don't recall those details. But I'm sure that he could
3 have very easily have told us that, yes.

4 Q Would you please look at Exhibit 234?

5 A Okay. I got it.

6 Q Sir, are Exhibit 234 notes of a conversation prepared by
7 Mr. Hoff on April 2nd, 2008?

8 A Yes, it is.

9 Q And, sir, do these notes refresh your recollection that in
10 the call Mr. Calliari said: Antoine has over 25 years of
11 dealing with Unilever, paren, intimate knowledge, closed
12 paren, and I have over 20 years of dealing with Unilever?

13 A Yeah, I see that here. Yeah, so he did say that.

14 Q And, in addition, Mr. Calliari said in that call: From
15 the beginning, I registered my disagreement with giving them
16 any price concessions, as I told you they were bluffing and
17 they had no intention of going to self-manufacturing.

18 Mr. Calliari said that in the call also, did he not?

19 MR. SULKIN: Your Honor, it's improper refreshing of
20 recollection. I have no problem with him doing it the proper
21 way.

22 THE COURT: Sustained.

23 BY MR. GOLDFARB:

24 Q Do you recall, sir, in the conversation with Mr. Calliari
25 on April 2nd, 2008, that he told you that from the beginning

1 he had registered his disagreement with giving any price
2 concessions to Unilever and that they were bluffing and had
3 no intention of going to self-manufacture?

4 A Clearly that's what's written. But clearly they weren't
5 bluffing, because they went into self-manufacture.

6 Q Sir, my question is very focused. Is that what
7 Mr. Calliari told you --

8 A Yes.

9 Q -- on April 2nd, 2008?

10 A Yes, that is absolutely what he told me.

11 Q And he also told you that his contacts in Europe supported
12 his view, correct?

13 MR. SULKIN: Same objection, your Honor.

14 THE COURT: Sustained.

15 A Uh --

16 THE COURT: Wait.

17 MR. GOLDFARB: I'll rephrase, your Honor.

18 THE COURT: Okay. The objection is to the manner
19 that you are refreshing.

20 BY MR. GOLDFARB:

21 Q So put the document to one side for a moment. Isn't it
22 true that in the conversation on May 2nd, Mr. Calliari said
23 to you that both he and Mr. Ioannides knew more about
24 Unilever than Sargento did, but that no one was listening to
25 them?

1 A Do you mean April 2nd?

2 Q I'm sorry. I mean April 2nd, 2008. I apologize.

3 A I don't know if he said that. But, obviously, in the
4 notes that --

5 Q No, I'm not asking about the notes, sir. I'm asking --

6 A Yeah, he said something to that effect, yeah.

7 Q And he told you in that conversation, didn't he, that
8 although he had signed the proposal to Unilever, he disagreed
9 with it? Do you recall that?

10 A I'd have to go back and look at the notes relative. Am I
11 allowed to do that?

12 Q Would you now please look at Exhibit 234 and tell me if
13 that assists you in recalling your conversation with
14 Mr. Calliari?

15 A And is that on the first page?

16 Q It's on the first page, the paragraph that starts with the
17 word "although."

18 A Where he said: Although I signed a proposal to Unilever,
19 even though I disagreed with it, too much time has
20 transpired?

21 Q Does that refresh your recollection?

22 A Yes, he's saying that.

23 Q And he said those words to you on April 2nd, 2008, didn't
24 he?

25 A Yes, he said those words to me.

1 Q Okay. And he also said to you in that call that too much
2 time has transpired from the date of the letter. He said
3 that, didn't he?

4 A Yes, he did say that.

5 Q And he said that he thought it was appropriate, since
6 Unilever hadn't responded until January of 2008, to tell them
7 that the world has changed and that you would not honor the
8 original proposal. Do you recall that?

9 A Yes, he did say that.

10 Q And do you recall him also telling you in that
11 conversation that the entire process regarding Bellingham
12 Cold Storage and direct shipment was unsuccessful? He used
13 the words "a bunch of BS," didn't he?

14 A He said: Regarding BCS, the entire process was a bunch of
15 BS.

16 Q And then what he told you in the call was: No one ever
17 had any intention of seriously working on my plan to direct
18 ship, which would have resulted in substantial savings to the
19 shareholders. Isn't that correct?

20 A It's confusing to me, because the guy working on it was
21 his direct report. And if he was the president of the
22 company, he should have had higher expectations for that
23 gentleman to do the job properly if he didn't think he was.

24 Q The person working on it was Mr. McEvoy?

25 A No. I believe the person assigned to it was Tom Kyle.

1 And Mr. McEvoy was assisting him at Patrick's approval.

2 Q The person negotiating with Bellingham Cold Storage over
3 these issues of cost savings was Mr. McEvoy and Mr. Gordy,
4 isn't that true?

5 A Well, as I recall, Tom Kyle led the study for him. Who
6 was actually doing the negotiating with Mr. -- I forget the
7 gentleman's name at BCS --

8 Q The owner's name is Doug Thomas. Isn't it a fact, sir,
9 that it was Mike McEvoy and Mike Gordy that were negotiating
10 directly with Doug Thomas?

11 A Again, all I can say is they may have been negotiating. I
12 don't -- my understanding is that Tom Kyle was involved in
13 the process. Whether he was attending all negotiation
14 sessions, I do not know. All I know is that Mike McEvoy and
15 -- and, quite honestly, I wasn't certain Mike -- did you say
16 Mike Gordy?

17 Q Yes.

18 A Yeah. I don't recall necessarily if Mike Gordy was
19 involved. I know Mike McEvoy was and that for a period of
20 time George Hoff was at Patrick's insistence.

21 Q Mr. Calliari told you on April 2nd, 2008, he said: The
22 lease, which is the lease with Bellingham Cold Storage,
23 allows us to direct ship. And everyone was dragging their
24 feet. That's something Mr. Calliari told you in that call
25 also, isn't that correct?

1 A Yes, he did.

2 Q Okay. And he also told you in that call that by the time
3 he finally got a plan to direct ship out of Bellingham Cold
4 Storage in mid-December 2007, it was too late to execute for
5 2008, isn't that correct?

6 A Obviously that's what he said.

7 Q And in this call on April 2nd, Mr. Calliari also told you
8 that he felt he had been removed from the business issues and
9 treated by Sargento as a person that doesn't know anything.
10 Those were his exact words, isn't that right?

11 A Those were his exact words. They don't represent fact.

12 Q It's not like you didn't know what his viewpoints were in
13 detail on April 2, 2008, because in that conversation, he
14 told you exactly the things that we just went over, correct?

15 A Yes.

16 Q Next, sir, looking at Exhibit --

17 MR. SULKIN: Your Honor, I move for the admission of
18 the document under Rule 612.

19 THE COURT: Any objection?

20 MR. GOLDFARB: I need to check the rule first, your
21 Honor. I'm not sure what the basis would be to admit the
22 entire document, your Honor.

23 MR. SULKIN: Your Honor, if you like, we can take it
24 up at break.

25 MR. GOLDFARB: The rule indicates, as I understand

1 it, your Honor, that portions can be introduced under certain
2 circumstances that relate specifically to the testimony of
3 the witness.

4 THE COURT: Go ahead and take it up later. Let's
5 push on, please.

6 BY MR. GOLDFARB:

7 Q Sir, if you could turn next to Exhibit 8. This was the
8 April 4, 2008 letter that Mr. Sulkin had talked to you about
9 earlier. Do you recall that?

10 A Yes.

11 Q There was a schedule that was prepared to go with the
12 letter, isn't that true?

13 A Yes.

14 Q Okay. And this recounts the dates when various things
15 happened with Unilever, correct?

16 A Yeah. I talked to him later. I don't know if it's
17 everything that happened. But it certainly was a time line
18 of the many things that did happen.

19 Q And what I've circled there, sir, that's the date when
20 Mr. Calliari's letter that you had prepared and he signed
21 went out, August 16, 2007, correct?

22 A Yes.

23 Q And the Unilever response to that proposal was January 29,
24 2008, isn't that also correct?

25 A Well, other than you can't exclude all the activities they

1 were doing in order to measure what they could do with that
2 in between. There were a lot of trips by Unilever people in
3 between there in order to judge the appropriateness of the
4 offer. And then, yes, written responses suggesting some
5 tweaks to it were provided during that period of time.

6 Q I'm not talking about what other things Unilever was
7 doing. I'm talking about when they formally responded.

8 A Yes.

9 Q Okay. And that was a period of five and a half months,
10 wasn't it, between August 16 and the end of January?

11 A Yeah, it's either four and a half or five.

12 Q I have to count. I'm sorry. September, October,
13 November, December, January, plus two weeks. Five and a half
14 months went by --

15 A Yes.

16 Q -- between the original letter and the response from
17 Unilever, isn't that correct?

18 A Uh-huh, yeah, that's correct. In the meantime, our
19 business went on.

20 Q And that was the gap Mr. Calliari was talking about on
21 April 2nd when he called you. He said: I think too much
22 time has gone by here. That's what he was referring to?

23 A Well, he said the world had changed, which I assume he
24 meant his shareholders now didn't like it.

25 Q And over on the right-hand side of this exhibit, there are

1 two columns. One says PC copy and one that says PC in
2 attendance. Do you see that?

3 A Yes, I do.

4 Q And looking at the PC in attendance column, this was
5 prepared by your office, is that correct?

6 A I'm not certain of it. I assume it probably was.

7 Q But this indicates that Mr. Calliari was not in attendance
8 at any of the events that are listed here, other than the one
9 at the very bottom, isn't that correct?

10 A Not by -- he wasn't there because he very seldom came to
11 Bellingham to participate in the management of the company.
12 So he chose not to be there. It certainly wasn't that he
13 couldn't. He only lives 70 miles away.

14 Q I only want the facts, sir. The fact was that he wasn't
15 present at any of the times listed here?

16 A Well, the ones that say NA, I assume -- and I don't know
17 if that means not available or what it means, but apparently
18 that means he wasn't in attendance. Not attending, I suppose
19 that means. I'm sorry.

20 Q And then down toward the bottom I see one there that says
21 3/4/08. That's March 4, 2008. Do you see that?

22 A Yes.

23 Q And what's written there are concerns expressed by
24 Patrick. Do you see that?

25 A Yes.

1 Q So the suggestion that you hadn't heard any concerns from
2 Patrick about this particular amendment until you got the
3 letter from the attorneys is inconsistent with what's
4 reflected in this exhibit, because according to this, he
5 expressed some concerns at some earlier time, isn't that
6 right?

7 A I think what we were talking about was concerns about us
8 wresting operational control away from him. In a
9 collaborative way of reviewing options on which way we would
10 go, people may input different types of concerns. We work
11 through them, different viewpoints, and we arrive at a
12 consensus decision. And everybody agreed on the decision
13 going forward.

14 Q Let me just see if I'm clear. This document indicates
15 Mr. Calliari expressed concerns about something on March 4,
16 2008, right?

17 A Sure, it indicates that. In fact, I think March 4th was
18 St. Germain.

19 Q And the concerns that were expressed had to do with
20 Unilever, didn't they?

21 A I'm going to assume that they had to do with Unilever.

22 Q Exhibit 16, sir.

23 A Got it.

24 Q This is the April 11, 2008 letter that you talked about
25 earlier, correct?

1 A Yeah, we've spoken to this.

2 Q We talked about it yesterday. And then Mr. Sulkin
3 addressed it this morning?

4 A Uh-huh.

5 Q So in the middle of the first page of this letter, which
6 is written by your attorneys, what they say is the letter
7 from Joe Weinstein on March 28 was the first formal
8 indication that Mr. Calliari's concerns went beyond the
9 normal give and take involved in making business decisions.

10 Do you see that?

11 A Yes.

12 Q Okay. But, in fact, before the formal letter that came
13 from the attorneys, Mr. Calliari had on prior occasions
14 expressed concern, right?

15 A Not beyond the normal give and take, as it says there.

16 Q But he had expressed concerns, correct?

17 A That went beyond the normal give and take, yeah, well,
18 involved in making business decisions.

19 Q Maybe I misheard your testimony earlier today. But I
20 thought what you were saying is Mr. Calliari had never said a
21 peep about being concerned about Unilever. Isn't that what
22 you said this morning?

23 A I don't believe that was meant to be in that form or
24 fashion. It was above the offer that was being -- when we
25 made the offer, he was happy with it. And he wasn't

1 expressing concerns about, again, us wresting operational
2 control away from him.

3 Q But it's true, isn't it, that Mr. Calliari had expressed
4 concerns repeatedly about whether or not it made sense to
5 renegotiate with Unilever? That's a fact?

6 A I expressed concerns as well, back and forth. We all did.

7 Q I'm not asking you that. I'm asking about Mr. Calliari.

8 A Uh-huh.

9 Q Okay. So the statement that he had never expressed
10 concerns about renegotiating Unilever, that's just not true,
11 right? He had expressed concerns?

12 A Well, I wouldn't say it was -- I just think it's kind of a
13 picky type of reference here. Obviously, everyone has issues
14 during a team meeting and discuss things. And I'm sure they
15 all express some kind of concerns. It wasn't meant in that
16 -- the statement wasn't meant in that manner.

17 Q Second page of the letter.

18 A Okay.

19 Q It says here that Mr. Gentine and George Hoff, as the
20 directors of Portionables, are directing Mr. Calliari as
21 follows. Do you see that?

22 A Both myself as his immediate supervisor and George Hoff
23 and myself as directors.

24 Q I'm just asking about the board part.

25 A Sure.

1 Q The fact is that there was no board action taken in this
2 time frame with regard to Mr. Calliari, isn't that true?

3 A I don't know that this says there was action taken. It
4 was just that we were -- we were, as the directors, directing
5 him to do something.

6 Q Okay. So you weren't trying to imply in this letter that
7 the Portionables board of directors had issued some or
8 approved some resolution or ruling that directed Mr. Calliari
9 to do something or other?

10 A I don't recall what I was implying relative to that.

11 Q But there was no board action in April of 2008 relative to
12 Mr. Calliari, isn't that correct?

13 A I don't recall whether there was any board action at that
14 period of time.

15 Q The first board action that happened with regard to
16 Portionables and Mr. Calliari was after his resignation, when
17 the board appointed Mike Gordy to run the company, isn't that
18 true?

19 A Yes.

20 Q And this paragraph 1 that Mr. Sulkin asked you about
21 earlier today, there is no question in this case, is there,
22 that as of April 11, 2008, you were going to make the
23 decision about the Unilever amendment whether Mr. Calliari
24 agreed or not, correct?

25 A I can't say that. That's not what this says.

1 Q Okay. I didn't ask you what this says. I asked you, was
2 it a fact --

3 A That there was a question?

4 Q You had made up your mind as of April 11th that
5 Mr. Calliari was not going to decide this, you were, correct?

6 A Because he was conflicted and was having trouble --

7 Q Sir --

8 A -- dealing with it, he needed to get my approval before
9 actions were taken. That's what it says.

10 Q Okay. But in point of fact, you had decided to make the
11 decision here, not Mr. Calliari, correct?

12 A I can't -- I can't say that in point of fact that was the
13 case. I can only say what we put into the letter here.

14 Q So at this point in time, you hadn't made up your mind
15 that you were going to approve the Unilever amendment?

16 A Well, as it goes on to say in No. 2, I needed -- I wanted
17 to get all of the information from Mr. Calliari relative to
18 all of the discussions that he had, all of the back and forth
19 he had had with Unilever, because it would provide me more
20 insight into why he held the -- you referred to it as the
21 position he held relative to not amending the contract.

22 Q Let me show you next Exhibit 33, which was discussed this
23 morning as well. This is the memo you claim Mr. Calliari
24 agreed to, is that right?

25 A Yes.

1 Q And it is a fact that in the May 23, 2008 letter, where
2 Mr. Calliari asked for a cure, one of the things he asked was
3 that you would drop this memo, correct?

4 A He asked that we change a lot of things that he approved
5 previously. And this was one of them.

6 Q And you were not willing to withdraw this memo, isn't that
7 also true?

8 A I don't believe so. We didn't respond to the -- we didn't
9 respond positively to the May 23rd letter in that regard.

10 Q Now, just in terms of the timing and the sequence of what
11 happened here, after your April 11th letter, there was a
12 request for mediation, isn't that correct?

13 A You know, I don't recall when the request came. But there
14 absolutely was a request for mediation.

15 Q And that came from Mr. Calliari, correct?

16 A Or his attorneys, I suspect.

17 Q Okay. And that mediation process took a number of weeks
18 to get resolved, did it not?

19 A I don't think the process -- the process itself was, I
20 believe, a day or a day and a half. But then, of course, the
21 ruling judge or whatever you call the mediator needed time to
22 make a final decision relative to the issues.

23 Q But my question, sir, is a different one. It's just that
24 that process from the beginning to the end of the mediation
25 took a number of weeks, didn't it?

1 A Are you saying the starting point was when they asked to
2 do it?

3 Q Yes, and getting it scheduled and --

4 A Oh, absolutely, it took weeks.

5 Q Okay. And it was shortly after that or near the end of
6 that process that the May 23, 2008 letter was delivered to
7 you, correct, the letter that demanded the cure?

8 A You're asking if this came after that process was
9 complete?

10 Q What I'm just saying is that there wasn't silence where
11 the parties weren't talking to each other for weeks and then
12 this May 23rd letter showed up out of the blue. What
13 happened in the intervening time was that the parties were
14 involved in this mediation process, correct?

15 A Yeah. And I just don't know the dates off the top of my
16 head, Mr. Goldfarb, relative to when the mediation happened
17 and when it was completed. So I don't want to misstate that
18 this document came before, after, during, or never.

19 Q Okay. But there was a period of time that was covered in
20 May and June of 2008, where the parties were involved in this
21 mediation process, right?

22 A Absolutely, yeah, yes.

23 Q And as we talked about yesterday, what was requested with
24 regard to Unilever was that Sargento stand down --

25 A Excuse me. Is there an exhibit I'm supposed to look at?

1 Q Oh, I'm sorry. It's Exhibit 14.

2 A Okay. I've got it. Thank you.

3 Q At the bottom of the first page there is what's being
4 requested by Mr. Calliari to cure the operational control
5 issues with regard to Unilever, correct?

6 A At the bottom of the first page, or which page are we on?

7 Q Sorry. It is the bottom of page 4.

8 A Oh, okay. Under demand for a cure?

9 Q Yes. And what Mr. Calliari through his counsel was
10 requesting was that Sargento stand down from any proposed
11 revision of the Unilever manufacturing contract, correct?

12 A That appears to be what No. 1 is. That's one of their
13 requests.

14 Q And you were absolutely not willing to agree to that,
15 correct?

16 A I was not willing to agree to that.

17 Q And then there was this alternative, which was, if you
18 wanted to go forward, give the shareholders a credit for the
19 actual pounds sold for Unilever, using the old contract to
20 calculate the earnout, correct?

21 A Yeah, that was an alternative offer.

22 Q And that was not acceptable to you either, correct?

23 A No, because we believe it was patently unfair and
24 inappropriate.

25 Q Well, if you didn't think that they were going to make the

1 earnout anyway, what difference did it make to you whether
2 you gave them credit for it or not?

3 A If I didn't think they were going to get the earnout?

4 Q Right. If you thought they were so far below the 3
5 million dollar threshold that it wasn't going to make any
6 difference, because what Mr. Calliari is saying here, he's
7 saying, look, if you change this contract, we're not going to
8 get the Unilever money because it will potentially be less,
9 right? That was his view. And if that happens, it's going
10 to affect the earnout. And so what he's saying is, give us a
11 credit here so it's fair to the shareholders, and I don't
12 have a problem. Isn't that what he's telling you here?

13 A Well, that's what he's asking for.

14 Q Right. And you weren't willing to do that?

15 A Because it wasn't appropriate. It wasn't fair. Because
16 you can't take that and segregate out the revenue portion of
17 this to the other values of the contract.

18 Q So it was unacceptable to you, correct?

19 A Yes.

20 Q Okay. You are familiar with someone named Dan Zinzer?

21 A Dan Zinzer is a salesman for our food ingredient group.

22 MR. SULKIN: Your Honor, object. This is beyond the
23 scope of my direct.

24 MR. GOLDFARB: Your Honor, the indication was made in
25 direct that there had been no complaints regarding

1 infringement on operational control. And, in fact, there
2 were some, of which I'm about to speak briefly.

3 THE COURT: Overruled.

4 BY MR. GOLDFARB:

5 Q You are familiar with someone named Dan Zinzer?

6 A Yes.

7 Q Mr. Zinzer is employed by Sargento?

8 A He was part of our food ingredients group which handled
9 industrial sales or sales to other food companies.

10 Q And he was calling on certain customers that were also
11 customers of Portionables? Birds Eye, being one in
12 particular, isn't that true?

13 A Yes.

14 Q And you received complaints from Mr. Calliari on more than
15 one occasion, did you not, that Mr. Zinzer was confusing the
16 process with regard to the sale of Portionables' products?

17 A Again, you can probably point me to the documents, but I
18 did receive communications from Patrick that he was concerned
19 about how Mr. Zinzer was playing his role.

20 Q Sir, at the time of the acquisition, did you have
21 conversations with other executives at Sargento about things
22 that might happen which would affect the EBITDA or the
23 earnout of Portionables?

24 A I don't know what you mean by that. So could you clarify
25 what you are asking?

1 Q Yes. Isn't it true, sir, that you had conversations with
2 Mr. Gordy in the April 2007 time frame, right at the time of
3 the acquisition, where you and he talked about strategic
4 steps that you might take or that the company might take and
5 how those would affect the earnout?

6 A I don't recall a conversation like that.

7 Q Do you recall Mr. Gordy telling you in April of 2007: I
8 understand that there is a point where we don't want
9 significant efficiencies because of the earnout multiple?

10 Do you recall that?

11 A Yeah, I think I can recall that, that he had concerns
12 there, because there were certain things that we didn't need
13 to include in the earnout thing, according to our agreement.

14 Q And his concern was that if certain things were achieved
15 on the earnout, your company was going to have to pay 6
16 dollars for every dollar, correct?

17 A Yes, I think that's probably what he's talking about.

18 Q Right. And managing this earnout was something that was
19 on his mind and yours from the beginning of the acquisition,
20 from the day it closed, isn't that true?

21 A Well, actually, what was on our mind was to maximize the
22 earnout relative to efficiencies that Patrick could put into
23 place without capital investment on our part, because we
24 weren't going to invest meaningful capital in the company
25 during the earnout period.

1 THE COURT: And, Mr. Goldfarb, can you clarify. I'm
2 not sure I heard correctly. Was it efficiencies or
3 deficiencies?

4 MR. GOLDFARB: It was efficiencies, your Honor. But
5 let me restate the question.

6 Q Isn't it true that Mr. Gordy told you that there was a
7 point where Sargento doesn't want significant efficiencies
8 because of the earnout multiple? In other words, he didn't
9 want to do things that were going to make Portionables more
10 profitable because of the earnout multiple?

11 A What he's talking about are things that we could bring to
12 the party. We didn't have to bring things to the party to
13 reduce their costs during the earnout period, because the
14 earnout was really based totally on top line performance.
15 That's where the profitability was going to be.

16 And we didn't have a responsibility or an obligation to
17 bring separate efficiencies into the organization that would
18 have been only achieved because of us, not because of the
19 improvements they made within Portionables.

20 Q So the fact is that in April of 2007, even as this
21 acquisition was closing, you and Mr. Gordy were talking about
22 things that you maybe wouldn't do because it would make the
23 company more profitable during the earnout period, right?

24 A Again, understanding that they were things that we didn't
25 need to do. As an example, if their health insurance plan

1 cost more than our health insurance plan, we didn't need to
2 put our health insurance plan -- and this was agreed to by
3 Mr. Patrick Calliari -- we didn't need to put our less costly
4 health insurance plan into place at dura -- at Portionables
5 prior to the earnout period. Those were the type of things
6 that would include.

7 Q All right. The fact is, you had conversation with
8 Mr. Gordy in April of 2007, talking about steps that you
9 might not take because if you did take them they would make
10 the company, Portionables, more profitable, correct?

11 A Steps that we had agreed with Mr. Calliari we need not
12 take.

13 Q Okay. And, again --

14 A Only those types of steps.

15 Q That conversation with Mr. Gordy happened in April of
16 2007, correct?

17 A Yes, because it was part of our understanding with Patrick
18 Calliari.

19 MR. GOLDFARB: Nothing further, your Honor.

20 THE COURT: Anything further, Mr. Sulkin?

21 MR. SULKIN: I do, your Honor.

22 RECROSS-EXAMINATION

23 BY MR. SULKIN:

24 Q I want to focus on some questions Mr. Goldfarb asked you.
25 Take a look, if you would, at Exhibit 204.

1 A Yes.

2 Q Mr. Goldfarb asked you why you didn't tell Mr. Boland to
3 not call you. And I think you gave an answer. I have a
4 different question for you.

5 Do division heads have the power or authority to tell you,
6 as CEO, who you can accept calls from?

7 A No.

8 Q Did Mr. Calliari ever tell you: Mr. Gentine, I do not
9 want you to accept a call from Mr. Boland?

10 A No.

11 Q Look at Trial Exhibit 59, please.

12 A Excuse me. What number?

13 Q 59. That's the final agreement.

14 A Okay.

15 Q You recall that Mr. Goldfarb compared this document to the
16 offer letter of August 16th?

17 A Uh-huh.

18 Q And he pointed out two differences, right? And let's just
19 get them right. One was exclusivity, the parameters of
20 exclusivity, correct, and the other was whether it was going
21 to be a four-year deal or a five-year deal? Do you recall
22 that?

23 A Yes.

24 Q All right. Did Mr. Calliari, when he called you in the
25 spring of 2007, say to you --

1 A Excuse me. 2007?

2 Q I'm sorry. Late for me now is the lunch hour.

3 A I'm the one sitting up here.

4 Q Mr. Calliari, did he ever say to you at any time,
5 Mr. Gentine, I'm against this deal because you are not giving
6 the exclusivity that we thought we were going to get?

7 MR. GOLDFARB: Objection, your Honor. Leading.

8 THE COURT: I didn't hear you, Mr. Goldfarb.

9 MR. GOLDFARB: Leading, your Honor. I'm sorry.

10 THE COURT: Sustained.

11 A The question was did he do that? No.

12 THE COURT: It was sustained. Sustained means you
13 don't answer.

14 THE WITNESS: I'm sorry. I get confused.

15 THE COURT: The jury is going to disregard the last
16 answer given.

17 BY MR. SULKIN:

18 Q Mr. Gentine, did Mr. Calliari ever mention to you any
19 particular concerns he had between the differences in the
20 final agreement and his August 16th letter as the basis for
21 his not agreeing?

22 A No.

23 Q Mr. Goldfarb talked to you about the phrase "business
24 judgment." Do you recall that?

25 A Yes.

1 Q And just to resituate us, Mr. Goldfarb talked to you and
2 was questioning you about his view that there's a dispute
3 among business judgment over whether the Unilever deal should
4 be signed or not in the spring of 2008. Do you recall that?

5 A Yes.

6 Q And he asked you about your understanding of business
7 judgment. And I want to ask you about it, too.

8 Could Mr. Ioannides be exercising business judgment if he
9 did not have all the facts?

10 MR. GOLDFARB: Objection, your Honor. Argumentative.
11 Not relevant.

12 THE COURT: Sustained.

13 BY MR. SULKIN:

14 Q Do you believe that Mr. Ioannides -- do you believe that
15 someone could be exercising business judgment if they did not
16 know what the competing underlying offer was -- let me
17 rephrase it.

18 Do you believe someone could be exercising business
19 judgment if they didn't know what the new proposal was to
20 Unilever and the basis for it?

21 MR. GOLDFARB: Objection, your Honor. Speculative
22 and relevance.

23 THE COURT: Sustained.

24 BY MR. SULKIN:

25 Q Was Mr. Ioannides exercising business judgment in the

1 spring of 2008?

2 A Well, Mr. Ioannides, as it turns out, was basing his
3 decision on the fact that -- I would believe Patrick Calliari
4 didn't exercise business judgment by providing Mr. Ioannides
5 all the details of what we were trying to do. Mr. Ioannides
6 apparently didn't know that we were getting a 20 million
7 pound minimum, which was an extremely big improvement. He
8 wasn't aware that we were now getting exclusivity as well,
9 over and above that.

10 So I would say if there's a business judgment issue, I
11 don't know that I can blame Mr. Ioannides. Maybe he should
12 have asked, well, what else is in the contract? But,
13 certainly, as the shareholder representative, I would think
14 that business judgment on Mr. Calliari's part would have been
15 to share that information with him.

16 MR. GOLDFARB: Your Honor, move to strike as not
17 responsive to the question.

18 THE COURT: Sustained. The jury will disregard the
19 last answer.

20 BY MR. SULKIN:

21 Q Mr. Gentine, take a look, if you would, at Trial Exhibit
22 8, the third page of the chart.

23 A Yes.

24 Q Mr. Goldfarb took you down the chart. And there's a bunch
25 of NA's where Mr. Calliari was not present at meetings. Do

1 **you see that?**

2 A **Yes, the things that he spoke of earlier.**

3 Q **Okay. Let's look at the 10/29 meeting, right there.**

4 A **Uh-huh.**

5 Q **It says, Tom Kyle. Who is Tom Kyle?**

6 A **He was the production manager at the Bellingham facility.**
7 **And I think he had some overlying responsibilities for North**
8 **Sioux City as well.**

9 Q **So let's look at 3/26, Tom Kyle. He's a Portionables**
10 **person?**

11 A **Tom Kyle was a direct report of Patrick Calliari at that**
12 **time.**

13 Q **Let's go to 9/4. Is that Tom Kyle there?**

14 A **Yes.**

15 Q **If Tom Kyle was invited as Patrick's subordinate, is there**
16 **any doubt that Mr. Calliari would have had the opportunity to**
17 **go?**

18 **MR. GOLDFARB: Objection, your Honor. Lack of**
19 **foundation.**

20 **THE COURT: Sustained.**

21 **BY MR. SULKIN:**

22 Q **Did Mr. Calliari, after receiving this chart, claim that**
23 **he was denied opportunity to go to these meetings?**

24 **MR. GOLDFARB: Objection, your Honor. Argumentative.**

25 **THE COURT: Sustained.**

1 BY MR. SULKIN:

2 Q Let's go to 9/14. Was Tom Kyle at that meeting?

3 A I don't know if that was a meeting or whether -- 9/14 says
4 Tom Kyle completed capacity chart, including garlic sauce
5 from Italy.

6 Q So in any event, wherever Tom Kyle's name is mentioned, he
7 is a Portionables person, is that right?

8 A Well, you know, it seems to me, relative to my feelings on
9 it, if a direct report of mine is at a meeting, he's
10 basically representing me at the meeting, and if there's an
11 issue that I'm going to be concerned about, that he'll bring
12 it back to me.

13 So I'm assuming that it would have been a similar
14 relationship. I'm assuming that that would be a similar
15 relationship that Mr. Calliari would have with his direct
16 reports.

17 MR. GOLDFARB: Move to strike, your Honor.
18 Nonresponsive. Lacking foundation.

19 THE COURT: Sustained. The jury will disregard the
20 portion of the answer that concerns what he assumed about
21 Mr. Calliari and Mr. Kyle's relationship.

22 BY MR. SULKIN:

23 Q Was it your understanding that Mr. Calliari communicated
24 with Mr. Kyle?

25 A Again, yes. He was his direct report. I would assume

1 that he was -- I can only assume. I wasn't there every time
2 he talked.

3 Q Was it your understanding that if Mr. Kyle was at a
4 meeting, that Mr. Calliari would know that?

5 MR. GOLDFARB: Objection, your Honor. Lack of
6 foundation.

7 THE COURT: Sustained.

8 BY MR. SULKIN:

9 Q Let's take a look, if you would, sir, at Exhibit --

10 MR. SULKIN: Your Honor, this might be a good time to
11 take up Exhibit 234.

12 THE COURT: All right. Ladies and gentlemen, it's
13 time to go to lunch. Would you please close your notebooks.
14 Please remember those special admonitions that I have given
15 you. Remember that you hold that very special place, a
16 unique position of being jurors, and that it's your job not
17 only to be fair, but to give the appearance of fairness.

18 Hope you have a good lunch. We'll see you back this
19 afternoon at 1:25.

20 (Jury leaves courtroom.)

21 THE COURT: All right. Let's talk about the issue.

22 MR. SULKIN: There may be a couple of other
23 evidentiary issues based on your rulings on my questions that
24 I would like to take up with you briefly.

25 THE COURT: Okay. Go ahead.

1 MR. SULKIN: First, I don't believe it is a leading
2 question for me to ask if Mr. Calliari ever said to you: I
3 don't want to do the deal based on exclusivity. It doesn't
4 suggest an answer. He can say yes or no. There's no other
5 way.

6 Mr. Goldfarb opened up that issue, made it look like to
7 the jury that those were two concerns. I don't know --

8 THE COURT: Well, your belief is not what is of my
9 concern. So when you ask "did" questions and use an
10 inflection that implies that you are supposed to get an
11 answer, then it's leading. There is more than one way to
12 lead. Both with the "did" and with your inflection, you
13 implied that he was supposed to give that answer. So let's
14 move on to another issue.

15 MR. SULKIN: Okay. And I don't want to upset the
16 court, because I want to get --

17 THE COURT: Counsel, I'm not upset in the least. I'm
18 just trying to explain myself. You're the one that appears
19 to be upset with what I'm saying.

20 MR. SULKIN: I'm not upset at all. I'm just trying
21 to learn.

22 So if I rephrase that question, that would be okay,
23 subject to his objection?

24 THE COURT: Anytime I hear a question that doesn't
25 start with who, what, when, where, how, why, the hairs on the

1 back of my neck go up and tell me that somebody is trying to
2 lead.

3 MR. SULKIN: Okay.

4 THE COURT: So ask him what was said, ask him who
5 said it, and we won't have a problem.

6 MR. SULKIN: Okay. On the issue of business
7 judgment, it was a subject that Mr. Goldfarb again opened the
8 door as to what his view of business judgment was. And I was
9 trying to explore that, given the fact Mr. Ioannides clearly
10 didn't have all the facts. And I just wanted to understand
11 the basis of your sustaining the objection to see if I could
12 reformulate a better question.

13 THE COURT: I sustained the objection based upon, the
14 first time, the basis of the fact that it was argumentative.
15 In other words, it doesn't further facts, but only is a point
16 of argument, asking one witness to comment upon another
17 witness' testimony or on the ability of the other witness to
18 form an opinion.

19 The second time I sustained it, it was because you asked
20 about Mr. Ioannides, and Mr. Gentine went off on what was
21 Mr. Calliari's business judgment. So he was not responsive
22 to the question.

23 MR. SULKIN: Okay. I understand. May we pick up
24 Exhibit 234 then?

25 THE COURT: Sure.

1 MR. SULKIN: Okay. Your Honor, Evidentiary Rule 612,
2 I think, is pretty clear that you can't -- that if you use a
3 document on an adverse witness to refresh, it comes in as to
4 the relevant portions of that document, the entire document.
5 And that's exactly what happened here. And what Mr. Goldfarb
6 did --

7 THE COURT: Actually, take a look at the wording,
8 because I think you just switched around who is the adverse
9 party here.

10 MR. SULKIN: May I, your Honor.

11 THE COURT: Yes.

12 MR. SULKIN: It says: If a witness uses a writing to
13 refresh memory for the purpose of testifying, either while
14 testifying, or an adverse party -- the adverse party is
15 entitled to have the writing produced at the hearing with
16 respective cross-examination of the witness and to introduce
17 into evidence those portions which relate to the testimony of
18 a witness.

19 THE COURT: The problem is, you are not an adverse
20 party.

21 MR. SULKIN: Mr. Gentine is adverse. Sargento is
22 adverse to him.

23 THE COURT: But an adverse party to a witness is what
24 that refers to. That rule is to make sure that somebody
25 hasn't reviewed the document with the witness, then

1 testified, then called it into question and the other side
2 doesn't know what has been reviewed.

3 MR. SULKIN: Then I can use it to refresh Mr. Gentine
4 as to other portions of that conversation if it is
5 appropriate?

6 THE COURT: If appropriate. Refreshing recollection
7 can be used if he forgets. If he doesn't forget, then
8 there's no need to refresh.

9 MR. SULKIN: All right. That's all I have, your
10 Honor.

11 THE COURT: Anything else?

12 MR. SULKIN: No, your Honor.

13 THE COURT: Okay. Counsel, you are putting our
14 jurors to sleep, and we're going to have to do something to
15 keep them awake. You've got to at least -- you've got at
16 least three or four that are on the edge.

17 So I don't know whether you need more bells and whistles.
18 If you want me to take more breaks, I'll do so. But they're
19 not taking notes. They are not tracking real well, at least
20 by my observations. Maybe yours are different.

21 So what would you like me to do?

22 MR. GOLDFARB: I think, your Honor, the ultimate
23 solution is for us to bring this to a swift and certain
24 conclusion. And it's my hope that the remaining witnesses
25 are going to be shorter. At least for myself, the direct of

1 Mr. Calliari is going to be significantly shorter than I had
2 first planned, because I think this is sort of just what it
3 is.

4 So that's what we have in mind. And I don't know how the
5 crosses are going to be. But I understand the rest of the
6 witnesses are short. So I think the best answer is for us to
7 just get on with it.

8 THE COURT: This is just for my planning and my
9 staff's planning purposes: Are we likely to get to the end
10 of your case this afternoon, Mr. Goldfarb?

11 MR. GOLDFARB: I think not, your Honor.

12 THE COURT: Okay. All right. Okay. Then let's have
13 a good lunch. And I'll see you back this afternoon.

14 (Lunch recess.)

15 THE COURT: Good afternoon. Are we ready to go?

16 MR. SULKIN: Yes, your Honor, with one caveat. As I
17 told you this morning, we would like to do a quick offer of
18 proof, literally two minutes, on a memorandum. We can do it
19 with Mr. Gentine right now before the jury comes in, or we
20 can do it later.

21 THE COURT: Why don't we do it at the end of the day.
22 How's that? That way I can release them. They won't have to
23 wait for us. We're going to be here anyway.

24 MR. SULKIN: Okay.

25 THE COURT: All right. Let's go get them, please.

1 (Jury enters courtroom.)

2 THE COURT: Please be seated. Is it a nice day out
3 there?

4 JUROR: If you like cold, yes.

5 THE COURT: Sometimes I forget what the outside looks
6 like.

7 Okay. Let's return back to our examination, please.

8 BY MR. SULKIN:

9 Q Mr. Gentine, I would like to take you back to the April
10 2nd phone conversation with Mr. Calliari. Mr. Goldfarb
11 refreshed your recollection on Exhibit 234. As you sit here
12 now, does your memory need further refreshing?

13 A Relative to what might be in that document?

14 Q Relative to what was said in that document.

15 A Yeah, I would guess so.

16 Q Why don't you take a look at Exhibit 234. And when
17 Mr. Goldfarb asked you to read, he was looking at page 1.
18 I'd like to just briefly look at the whole document just very
19 quickly. And let me see what you recall after you read it.

20 A I didn't hear what you said.

21 Q Sure. Just briefly flip through the document.

22 A Just look through it?

23 Q Yes. And when you're done looking at it, let me know.

24 A Okay.

25 Q Does that help refresh your recollection as to that

1 conversation?

2 A Yeah, at least somewhat so, quick reading.

3 MR. GOLDFARB: Your Honor, thus far, it's improper
4 use of the exhibit.

5 THE COURT: Sustained.

6 BY MR. SULKIN:

7 Q Does the exhibit refresh your recollection, sir?

8 A Yes.

9 MR. GOLDFARB: Objection, your Honor.

10 THE COURT: Sustained.

11 BY MR. SULKIN:

12 Q What do you recall of that -- don't look at the exhibit.
13 What do you recall of that conversation on April 2nd relating
14 to Unilever? I don't want to talk about any other issues.

15 MR. GOLDFARB: Excuse me. Objection, your Honor.
16 Just to be clear, what we believe is admissible here is what
17 Mr. Calliari said, the question I asked previously, but not
18 what this representative party may have said out of court.

19 BY MR. SULKIN:

20 Q Just so the question is clear, what did Mr. Calliari say
21 concerning Unilever?

22 THE WITNESS: May I answer?

23 THE COURT: Yes, you may answer. There's no
24 objection.

25 A Patrick had said that he was fully involved in the

1 Unilever letter that went out on August 16th, that he, after
2 the process went forward, he agreed with it, and that it
3 absolutely didn't interfere with his operational control.

4 MR. SULKIN: Thank you. I have no further questions,
5 your Honor.

6 THE COURT: Anything further?

7 MR. GOLDFARB: I just have one, your Honor.

8 REDIRECT EXAMINATION

9 BY MR. GOLDFARB:

10 Q Mr. Gentine, in this meeting -- or in this phone call --
11 I'm sorry -- on April 2nd, Mr. Calliari told you that he
12 thought too much time had gone by with regard to Unilever,
13 correct?

14 A I believe he did. This was where he said the world had
15 changed?

16 Q Yes. Sir, I'm --

17 A I'm only trying to remember what you said, because I'm not
18 looking at the document.

19 Q Well, will it refresh or help refresh your recollection to
20 look at the document, sir?

21 MR. SULKIN: Your Honor, this has been asked and
22 answered previously.

23 THE COURT: Overruled.

24 A Can you help me get to where I'm supposed to be reading or
25 finding this, recollecting it?

1 BY MR. GOLDFARB:

2 Q The paragraph that starts with the word "although."

3 A Yes.

4 Q Just read the document, sir. Let's focus on my question.
5 Mr. Calliari told you in that conversation that he thought it
6 was not -- that he thought not to sign the Unilever
7 amendment, correct? And that position was made clear to you
8 again in this phone call?

9 A In that paragraph that starts with "although," I don't
10 disagree with anything said in the paragraph. Could I just
11 read it?

12 Q No. I just want -- here's my question --

13 A Because in that paragraph it didn't say that he said that
14 he disagreed with it.

15 MR. SULKIN: Your Honor, this is improper refreshing.
16 He's just reading from the document.

17 MR. GOLDFARB: And I'm not asking the witness to do
18 it, your Honor.

19 Q My question is this -- let me restate my question. My
20 question is: Isn't it true that on April 2nd, when you
21 talked to Mr. Calliari on the phone, he made it clear to you
22 in no uncertain terms that he opposed amending the Unilever
23 contract?

24 A Yes.

25 MR. GOLDFARB: Thank you, sir.

1 THE COURT: Ladies and gentlemen, do any of you have
2 any questions that you wish to ask the witness before he is
3 excused? If you do, please write them down and pass them to
4 the end of the row.

5 All right. Thank you, sir. You may step down.

6 THE WITNESS: Thank you, your Honor.

7 THE COURT: Next witness, please.

8 MR. FISHER: Your Honor, the plaintiffs would read
9 excerpts from the deposition of Karl Linck. We have a reader
10 outside, I believe.

11 THE COURT: Ladies and gentlemen, let me explain what
12 we're doing. Remember I told you what depositions were.
13 They are sworn statements by a witness in front of lawyers
14 for each side, and the witness is sworn, and they're answers
15 to the questions that are written down. We have the
16 transcript, and we are going to read that to you because the
17 witness is unavailable.

18 You are to consider what you hear here in the courtroom
19 the same way as if the witness were able to appear. The
20 person reading the transcript is merely a reader and is not
21 the witness.

22 Please come forward, sir. Please have a seat.

23 MR. FISHER: Your Honor, do I have permission to
24 approach?

25 THE COURT: Yes.

1 MR. FISHER: And I would ask to unseal and publish
2 the original transcript.

3 THE COURT: And, ladies and gentlemen, when we say we
4 want to publish the transcript, that's a lawyer's way of
5 saying we want to open it up, because the transcript is
6 sealed until it comes to court.

7 MR. FISHER: Your Honor, may I proceed?

8 THE COURT: Go ahead. Mr. Fisher, you are going to
9 be playing yourself, is that correct?

10 MR. FISHER: That's true, your Honor.

11 THE COURT: All right.

12 (Deposition read:)

13 Q Good morning, Mr. Linck. Would you please state your full
14 legal name?

15 A Karl Leonard Linck.

16 Q Are you currently employed?

17 A Yes.

18 Q Who is your employer?

19 A Sargento Foods.

20 Q And how long have you been employed by Sargento?

21 A Since November of 1987.

22 Q What is your current title?

23 A Vice president, engineering.

24 Q And how long have you been the vice president of
25 engineering?

1 A Since about '92, in that area.

2 Q What are your general duties as vice president of
3 engineering for Sargento?

4 A I'm responsible for basically all of the engineering-
5 related technical activity, which would include plant
6 layouts, plant expansions, directing some new technology,
7 making -- I also have some responsibilities for compliance
8 and licensing, have some intellectual property
9 responsibilities. Regulatory responsibilities that relate to
10 like EPA and OSHA are under my direction.

11 Q Is the licensing of the Portionables facilities under your
12 jurisdiction?

13 A It's one of my responsibilities that I've been working on,
14 yes.

15 Q And did you pick up that responsibility in the spring of
16 2007, when the company was acquired?

17 A No.

18 Q Who was responsible for licensing on May 1st, the day
19 after the acquisition closed?

20 A My understanding was that Patrick Calliari had full
21 control of the company until the end of 2008.

22 Q Okay. So let's be clear here. So Patrick Calliari, your
23 understanding was that he had absolute control over
24 Portionables through 2008?

25 A Yes, operating control, yes.

1 Q So he would have been the one to make decisions about how
2 to respond to the SDDA on licensing issues?

3 A Yes.

4 Q If you were going to make a strategic decision about how
5 to approach, for example, the licensing issues related to the
6 South Dakota facility in 2008, those would have to be
7 approved by Mr. Calliari, correct?

8 A They were sent through Mike Gordy.

9 Q That's not really the question. The question -- and I'm
10 asking for your understanding, not some absolute truism.

11 A Right.

12 Q Your understanding is any decisions that would be made
13 with respect to licensing of the South Dakota facility, any
14 decision like that would have to be approved by Mr. Calliari,
15 correct?

16 A Through Mike Gordy, yes.

17 Q Is there any reason not to include Mr. Calliari on
18 correspondence related to important issues of Portionables'
19 business?

20 A That would be up to Mike.

21 Q Did someone tell you not to include Mr. Calliari on
22 certain types of e-mails?

23 A No.

24 Q Were you involved in the purchase of Portionables?

25 A No.

1 Q Were you involved in the decision-making process as to
2 whether or not to purchase Portionables?

3 A No.

4 Q Did you have any involvement in negotiating the terms of
5 the acquisition of Portionables?

6 A No.

7 Q Did you have any role at all in negotiating the stock
8 purchase agreement that was ultimately signed?

9 A No.

10 Q As you sit here today, do you have any recollection of
11 seeing the stock purchase agreement before it was signed?

12 A No, I did not.

13 Q Okay. You also mentioned when I was asking you questions
14 about Mr. Calliari's role at Portionables, you said that
15 things that were to be approved by or involved Mr. Calliari
16 went through Mike Gordy, or something to that effect. Why is
17 it that you were sending information about Portionables
18 through Mike Gordy?

19 A Basically, it was the way I was set up to do it.

20 Q And when you say set up, what does that mean?

21 A In terms of just the understanding, the understanding I
22 had of how to communicate through the organization of
23 Portionables.

24 Q Mr. Calliari didn't tell you to send information about
25 Portionables through Mr. Gordy before it got to him, correct?

1 A No, he did not.

2 Q Did Mr. Gordy or anyone else at Sargento tell you that
3 that's what the line of communication should be?

4 A I don't know who exactly told me, but that was the line of
5 communication I understood.

6 Q So as you sit here today, your best recollection is that
7 someone in management at Sargento told you that
8 communications concerning Portionables should go through
9 Mr. Gordy?

10 A Yes.

11 Q Okay. And Patrick Calliari was in charge of Portionables,
12 correct?

13 A Up until some point in time.

14 Q Patrick Calliari, you said he was the decision-maker in
15 2008 with respect to the Portionables business, correct?

16 A I said he was supposed to have operational control.

17 Q Mr. Linck, the reporter has handed you a two-page document
18 that's been marked as Exhibit 43 to the deposition. Do you
19 recognize Exhibit 43?

20 A Yes.

21 Q Is this a document that you've prepared?

22 A Yes.

23 MR. FISHER: Your Honor, plaintiffs would offer
24 Exhibit 43.

25 THE COURT: 43 will be admitted.

1 (Exhibit(s) 43 admitted.)

2 (Deposition read:)

3 Q Why did you send this e-mail to all of these people at
4 Sargento?

5 A It's basically the Sargento general staff involved with
6 getting Portionables' plans kind of into Sargento.

7 Q Why didn't you send it to Patrick Calliari?

8 A Mike Gordy would have taken care of that.

9 Q So that's because the instruction you were under was to
10 communicate through Mike Gordy?

11 A Basically, yes.

12 Q Mr. Linck, the reporter has handed you an e-mail that has
13 been marked as Exhibit 49 to your deposition. Do you
14 recognize Exhibit 49?

15 A Yes.

16 Q This is an e-mail that you authored?

17 A Yes.

18 MR. FISHER: Your Honor, plaintiffs would offer
19 Exhibit 49.

20 THE COURT: 49 will be admitted.

21 (Exhibit(s) 49 admitted.)

22 (Deposition read:)

23 Q And then you go on in the second to last paragraph, you
24 talk about planning, sort of planning and strategic issues
25 for the South Dakota facility generally, correct?

1 A Yes.

2 Q Are these important issues with respect to the business of
3 Portionables?

4 A It's important for every business.

5 Q Why isn't Patrick Calliari included in the dialogue on
6 this? Why didn't you send him a copy of this e-mail?

7 A It was a request from George Hoff for the financial
8 returns. So it was sent to George and copied to Mike to pass
9 on to Patrick, I guess.

10 THE COURT: Mr. Fisher, I have skipped a page
11 somehow. Can you give me the number?

12 MR. FISHER: The page number?

13 THE COURT: Yes.

14 MR. FISHER: We're on page 128.

15 THE COURT: Thank you.

16 MR. FISHER: Line 7, I think we're picking up.

17 THE COURT: I'm sorry. Two of them stuck together
18 when I turned them too rapidly. Go ahead.

19 (Deposition read:)

20 Q Do you know if Mike passed it on?

21 A No idea.

22 Q Mr. Linck, the reporter has handed you a one-page e-mail
23 that's been marked as Exhibit 26 to the deposition,
24 previously marked as Exhibit 36, identified by the Bates No.
25 SAR 13400. Do you recognize Exhibit 26?

1 A Yes.

2 Q This is an e-mail that you wrote to Mike Gordy and Mike
3 McEvoy on April 14, 2008, correct?

4 A Yes.

5 MR. FISHER: Your Honor, plaintiffs would offer
6 Exhibit 26.

7 THE COURT: 26 will be admitted.

8 (Exhibit(s) 26 admitted.)

9 (Deposition read:)

10 Q And you state here that you wanted to give them a heads up
11 to a possible issue that is developing at Portionables in
12 South Dakota?

13 A Yes.

14 Q Did you consider this to be an important issue for the
15 management at Portionables?

16 A Of course.

17 Q Is there some reason that Patrick Calliari wasn't copied
18 on this e-mail?

19 A I copied Mike Gordy, who would have taken that
20 communication forward.

21 Q Did you know if he did take this forward?

22 A No.

23 Q How did you decide when you would include Patrick on
24 e-mails and when you wouldn't?

25 A In general, I didn't include Patrick in my e-mails.

1 Q As far as you knew, Patrick Calliari never approved
2 anything that you did with respect to your regulatory
3 analysis or communications, correct?

4 A I don't know whether he approved or didn't approve.

5 Q Right. You just have no idea one way or the other?

6 A Correct.

7 Q Did someone tell you to start calling the regulatory
8 agencies about the South Dakota plant in the middle of April
9 of 2008?

10 A The inquiries that I made in early -- I made earlier in
11 April 2008 were very broad inquiries that wouldn't really
12 point to Portionables. They were broad inquiries coming from
13 Sargento and just in terms of asking about export service. I
14 didn't make any contacts identifying Portionables' operation
15 until after, you know, we basically had discussed this.

16 Q Did someone tell you to make -- start making the first
17 calls? Did someone at management at Sargento approve that?

18 A I approved it.

19 Q Because you are the vice president?

20 A Yes.

21 Q So you decided to do that. But, again, you didn't talk to
22 Mr. Calliari?

23 A No.

24 Q Mr. Linck, the reporter has handed you what has been
25 marked as Exhibit 12 to your deposition, an e-mail identified

1 as Bates No. SAR 2790. Is this another e-mail you authored?

2 A Yes.

3 Q Why didn't you include Patrick Calliari on this?

4 A Once again, I copied it to Mike Gordy.

5 Q Right. And you go on to say: That might be a huge
6 Pandora's box?

7 A Yes.

8 Q But you think it's the right thing to do and it would buy
9 you a good relationship with the state?

10 A Yes.

11 Q So by Pandora's box, you are saying it would open up lots
12 of issues that might not otherwise arise?

13 A If I, as a Sargento employee, contact the State of South
14 Dakota, South Dakota comes in and says: Cease and desist
15 operations until you are in compliance. And that has to do
16 with earnout, and I hurt, you know, Patrick's ability to do
17 his earnout because the plant is down. Yeah, that's a huge
18 Pandora's box.

19 Q Really, you were worried about the earnout? That was your
20 concern here?

21 A It was one of the things I was concerned about.

22 Q In any event, it's an important decision whether you are
23 going to open a Pandora's box for Portionables, correct?

24 A Of course.

25 Q To your knowledge, was Patrick Calliari included in the

1 discussions and the decision-making about this?

2 A I don't have knowledge of that.

3 Q You ultimately did approach the South Dakota Department of
4 Agricultural about this issue, correct?

5 A Yes.

6 Q The decision was made you were going to go raise the issue
7 with them?

8 A Yes.

9 Q Do you have any idea whether Patrick Calliari participated
10 in that decision?

11 A I don't have any idea.

12 Q But it is your belief, again, just so we're clear, that he
13 was supposed to have operational control of this company in
14 April of 2008, correct?

15 A Yes.

16 Q Mr. Linck, you have in front of you -- in front of you,
17 you have Exhibit 27, SAR 2775. Do you recognize this e-mail?

18 A Yes.

19 Q Is it an e-mail you wrote the following day, April 17,
20 2008?

21 A Yes.

22 MR. FISHER: Your Honor, plaintiffs would offer
23 Exhibit 27.

24 THE COURT: 27 will be admitted.

25 (Exhibit(s) 27 admitted.)

1 (Deposition read:)

2 Q The paragraph towards the bottom of the page that starts,
3 "Although Mark suggested we may want to delay sitting down
4 with the state of South Dakota until after January," do you
5 see that?

6 A Yes.

7 Q Who is Mark?

8 A Mark Rhyan.

9 Q And, in fact, he did suggest you should wait until after
10 2008 to raise this issue with South Dakota, correct?

11 A That's what I'm indicating here.

12 Q Well, do you think that's an accurate statement of what
13 Mark was suggesting at this point in time?

14 A Yes.

15 Q Do you have any idea why January was an important date?

16 A I suspect it had to do with the earnout.

17 Q Right. The earnout ended at the end of 2008, correct?

18 A Yes.

19 Q But you go on here to say that you wanted to address it
20 immediately, you didn't want to wait until January, correct?

21 A Correct.

22 Q And to your knowledge, Patrick Calliari wasn't involved in
23 any of this dialogue concerning this decision about how and
24 when to approach South Dakota about this issue?

25 A I don't know if Mike talked to him or not.

1 Q During the course of these discussions and these e-mail
2 exchanges, did anyone say: This is an important issue. We
3 should get Patrick's input on it?

4 Do you recall anyone saying that?

5 A I don't know.

6 Q So you don't recall that coming up?

7 A I don't recall it, or I don't know if it happened.

8 Q Do you think he was the ultimate decision-maker on whether
9 you should in fact be proactive and approach the state? Was
10 that his decision to make in April of 2008?

11 A I don't know if it was or it wasn't.

12 Q Mr. Linck, you have in front of you Exhibit 61, a two-page
13 e-mail string identified by Bates Nos. 2772 to 2773. Do you
14 recognize that e-mail chain?

15 A Yes.

16 MR. FISHER: Your Honor, plaintiffs offer Exhibit 61.

17 THE COURT: 61 will be admitted.

18 (Exhibit(s) 61 admitted.)

19 (Deposition read:)

20 Q In the last sentence of the first paragraph of Mr. Ryan's
21 April 17, 2008 e-mail to this group, he says, quote: We
22 should discuss this in the near future, as the plant has
23 issues without the licenses and the pursuit of same may very
24 well put us in a further adversarial position from the
25 standpoint of their earnout.

1 Do you see that statement?

2 A Yes.

3 Q Who is, quote, their, unquote?

4 A I would imagine it's the people who are entitled to the
5 earnout.

6 Q You received this e-mail. Did you understand that
7 Mr. Rhyan was saying taking certain actions is going to put
8 us in an adversarial position with the stockholders of
9 Portionables with respect to their earnout?

10 A With respect to whoever had interest in an earnout, yes.

11 Q Did a copy of this e-mail, to your knowledge, go to
12 Mr. Calliari?

13 A I wouldn't know that.

14 Q Whose decision was it about what actions should be taken?
15 Do you know?

16 A Actions in terms of -- what action?

17 Q With respect to the issues raised in your e-mail that
18 starts at the bottom of page 1 of Exhibit 61.

19 A Oh, whether or not to go to the state?

20 Q Yes.

21 A It was basically the executive group's decision.

22 Q By that, you mean the executive group of Sargento?

23 A Yes.

24 Q And as far as you know, that does not include Patrick
25 Calliari?

1 A I have no idea if Patrick was included or not.

2 Q You were well aware, everybody was aware, that there was
3 an earnout in the stock purchase agreement, correct?

4 A All the officers were, yes.

5 Q But you do believe that Mr. Calliari was supposed to have
6 operational control over those kinds of decisions for
7 Portionables, correct?

8 A I don't know what operational control included in total.

9 Q So how did you know who was making decisions?

10 A That's why I would correspond with Mike Gordy.

11 Q And you would do whatever Mike told you?

12 A Basically, yes.

13 Q Mr. Linck, the reporter has handed you what's been marked
14 as Exhibit 28 to your deposition, SAR 2721. Do you recognize
15 this e-mail from Mike Gordy?

16 A Yes.

17 Q Mr. Gordy was asking you to provide several regulatory
18 consultants familiar with South Dakota dairy regulations?

19 A Yes.

20 MR. FISHER: Your Honor, plaintiffs offer Exhibit 28.

21 THE COURT: 28 will be admitted.

22 (Exhibit(s) 28 admitted.)

23 (Deposition read:)

24 Q And this is work that's going to be adverse to
25 Mr. Calliari and the other shareholders, correct?

1 A Probably, yes.

2 Q How did you know at this point when you were sending
3 e-mail, exchanging e-mails with Mr. Gordy, whether those were
4 things that were adverse to Patrick Calliari and were going
5 to be withheld from him and those things which related to the
6 management of Portionables that you expected Mr. Gordy to
7 pass through to him?

8 A That was his decision.

9 Q So you just expected that Mr. Gordy was going to filter
10 the stuff that was related to the management of the company
11 versus things that were adverse to Mr. Calliari. That was
12 Mr. Gordy's decision, not yours?

13 MR. LINEHAN: Objection. Mischaracterizes his
14 testimony. Assumes facts not in evidence.

15 THE COURT: Overruled.

16 (Deposition read:)

17 A Mike Gordy was the person I passed communications through.

18 Q Okay. But by this point in time, some of them are hostile
19 and adverse to Mr. Calliari. And then there's other e-mails
20 that relate to the management of Portionables, correct?

21 A I don't know if I'm hostile. I think it's just factual.
22 We're in a problem here, how do we get out of it, and
23 starting to support our case. So from that standpoint, the
24 communications went through Mike Gordy.

25 MR. FISHER: Thank you, your Honor. That concludes

1 the reading of the excerpts.

2 THE COURT: Thank you. You may step down.

3 Next witness, please.

4 MR. GOLDFARB: Plaintiffs call Patrick Calliari.

5 THE COURT: Okay. Ladies and gentlemen, how would
6 you like to stand up and take a stretch before we start the
7 next witness?

8 (Witness sworn.)

9 THE COURT: Please have a seat, sir.

10 MR. GOLDFARB: Your Honor, before we begin, I have a
11 brief question. I have a couple of samples of the product
12 that I was going to have Mr. Calliari explain, as a
13 demonstrative. I think Mr. Sulkin has no objection to them.
14 Because of their nature, I prefer not to mark them, just
15 because the court will have to deal with them in that
16 fashion. But I leave that to your Honor's discretion.

17 THE COURT: Is it your intent that they get to sample
18 the wares?

19 MR. GOLDFARB: Well, I didn't think that far ahead,
20 your Honor.

21 THE COURT: Okay. That's fine. Go ahead and show
22 them when you are ready.

23 MR. GOLDFARB: May I approach now? I'll bring them
24 up.

25 THE COURT: Sure.

1 MR. GOLDFARB: May I begin, your Honor?

2 THE COURT: Yes, go ahead.

3 PATRICK CALLIARI,
4 being first duly sworn, the witness was called and testified
5 as follows:

6 DIRECT EXAMINATION

7 BY MR. GOLDFARB:

8 Q Sir, would you state your full name for the record?

9 A Yeah. My name is Patrick Calliari.

10 Q And where are you from?

11 A I was born and raised in Paris, France.

12 Q I think if you get a little farther back from that
13 microphone, it may be easier to understand you.

14 A What about now?

15 Q That's good. What is your current residence address?

16 A I live in Kirkland, Washington.

17 Q Is English your first language?

18 A No. It's my third language.

19 Q What is your native language?

20 A French.

21 Q Where did you grow up?

22 A In Paris.

23 Q How long did you live in France?

24 A About 25 years, 24 years.

25 Q What is your educational background?

1 A I've got a college degree in business administration with
2 a major in international marketing techniques, also
3 accounting and economies.

4 Q And where did you obtain your degree?

5 A In France.

6 Q And approximately when did you do that?

7 A 1978.

8 Q And after your education, what did you do next?

9 A I went to the Army for one year.

10 Q And what did you do in the Army?

11 A I was learning how to fly planes.

12 Q And after your time in the French Army, what did you do
13 next?

14 A I started -- I was self-employed. I was pilot, and I did
15 some charter flights.

16 Q And did you move into a different business?

17 A Later on in life, yes.

18 Q Okay. Tell us, after you were in the airplane charter
19 business, what business did you enter into?

20 A I entered into import and export of food products.

21 Q Okay. And where were you located when you did that?

22 A I started that when I was in South America and afterwards
23 when I moved to the United States.

24 THE COURT: Mr. Calliari, could I have you sit back
25 just a little?

1 THE WITNESS: Oh, sure.

2 THE COURT: I'm getting some feedback from the
3 microphone.

4 THE WITNESS: Is it better like this?

5 THE COURT: Yes, that's better. Thank you.

6 BY MR. GOLDFARB:

7 Q Would you tell us a little bit about how you came to form
8 the company called Portionables?

9 A I had met Mr. Ioannides a long time ago. And I was in the
10 import/export of food products. And I saw what he was doing
11 in France. And I thought that we had good opportunities here
12 in the United States. He was also looking at the United
13 States. So I said we will put together a great company here.
14 And we entered into a technology agreement.

15 Q So were you one of the founders of Portionables?

16 A Yes. Antoine Ioannides and myself, yes, we were the
17 founders.

18 Q And then were there some other shareholders as well?

19 A More shareholders came around, yes. We had somewhere like
20 23 shareholders.

21 Q And then at the time of the stock purchase agreement
22 that's the subject of this case, there were less
23 shareholders?

24 A Yeah, much less.

25 Q Tell us again in brief fashion what was the business of

1 Portionables?

2 A Portionables is a company that was making the sauce
3 component of many of the meals in the market. So if you
4 don't mind me showing you, just for example, this is a
5 company owned by Con Agra, and we were making the sauce
6 component.

7 And the difference between Portionables and most of the
8 other meals in the market, you know, I don't know if you
9 recall, if you buy these kind of meals, the sauce would come
10 in a block, and you will have to put the block in the boiling
11 water and burn your fingers trying to pour it.

12 With Portionables, it was a system where we would freeze
13 the sauce and make a small portion like ice cubes. And we
14 could do it in about two, two and a half minutes. So it was
15 a much better product and much better quality and much
16 friendly -- much friendlier to use.

17 So today in the market this is -- we're talking about
18 Unilever a lot. This is the product that we make for
19 Unilever. If you see these meals in the market, you will see
20 inside you have the sauce with the pasta, with chicken, with
21 vegetables. So it's all mixed together.

22 So these are the kind of products. Like this one, Birds
23 Eye, if you buy this. Healthy Choice is also owned by Con
24 Agra. So these are the kinds of meals that carry the
25 Portionables sauce.

1 Q Approximately when did you found the company?

2 A 1995.

3 Q And over time, was there expansion?

4 A Yes. In 2005, we build a new facility in South Dakota.

5 Q And at some point, was there interest expressed by any
6 other company in buying Portionables?

7 A Yes. We were contacted in late 2006 by a French company.
8 They wanted -- they had an office already here in Virginia,
9 in the United States, marketing of this here. They had been
10 trying to penetrate the U.S. market. And they had some
11 difficulties. So they decided to look at a similar business
12 in the United States as the business they had in France.

13 And so they decided to look for a company in the U.S.
14 where they could buy in the same line of product. So they
15 found us. And they approached me, they approached Antoine
16 Ioannides, and they expressed interest. They want to buy
17 their way into the U.S. market.

18 Q Did representatives from that company travel to the United
19 States?

20 A Yes. We had several. We have the CEO and president of
21 the company come to Bellingham. We went to South Dakota.
22 And they were very interested.

23 Q And did you go to France in connection with that possible
24 transaction?

25 A Yes. Before we received a formal offer, I did travel to

1 France. And Mr. Ioannides and myself went to Versailles. It
2 was a formal meeting.

3 Q And toward the end of 2006, what was the status of those
4 discussions?

5 A We were moving towards a commitment, a formal commitment,
6 a letter of intent. But it's also a commitment that someone
7 is very interested in buying your company. They write the
8 terms that they want to buy the terms. And they want to pay
9 so much, these are the terms.

10 And but, of course, it's only a letter of intent, because
11 they have to do what we call their due diligence. They have
12 to make sure the company is what they think it is. So they
13 reserve their right basically to buy the company until they
14 make sure that the company is sound.

15 Q Are you familiar with the term "earnout"?

16 A Yes.

17 Q And could you tell the jury your understanding, again, in
18 a brief description, of what you understand earnout is?

19 A Well, earnout in the case of when you purchase a company,
20 you have someone who is going to pay you some amount up front
21 and afterwards you are on earnout. The earnout is your right
22 to earn a certain amount if you perform.

23 So if there is going to be tenure, but you have to
24 basically keep it under certain guidelines. If you do that,
25 you have a right to an amount, to a lump sum. So this is the

1 way I understand it.

2 Q Was an earnout something that was under discussion with
3 the possible French buyer?

4 A Yes.

5 Q And was an earnout something you were willing to consider?

6 A Of course.

7 Q Were there any conditions that you thought you would want
8 if you were going to agree to an earnout?

9 A Well, the basics, I think it works with every transaction.
10 If you agree to an earnout, in order to -- an earnout is
11 based on a certain amount if you perform. So in order to be
12 able to have a chance to perform, you must have the control
13 of the company during a certain time. If your earnout is
14 going to take two years, you must be able to have control of
15 the company for two years, because basically your own destiny
16 is in your hands.

17 Q If I can get you now to look at Exhibit 15?

18 MR. GOLDFARB: I believe this has been admitted, your
19 Honor.

20 Q Exhibit 15 appears to be from a gentleman named William
21 Beard. Do you see that?

22 A Yes.

23 Q Could you tell the jury who that is, please?

24 A Bill Beard was hired. I hired Bill Beard. Bill Beard was
25 a consultant, a specialist in merger and acquisitions. He

1 has been doing that for about 25 years. And I felt that
2 myself and the shareholders needed the assistance of someone
3 that is in this line of business, in order to give us good
4 advice about what to do, what not to do, and make sure that
5 we understand what a merger acquisition is all about.

6 Q And was Mr. Beard involved with the discussions with the
7 French company?

8 A Yes, he was.

9 Q And was Mr. Beard asked to provide information to Sargento
10 about the general terms that were under discussion with the
11 French company?

12 A Yes.

13 Q And are those what are reflected in Exhibit 15?

14 A Yes.

15 Q Okay. With regard to the discussions -- and what was the
16 name of the French company?

17 A Cap Diana.

18 Q And in those discussions, had you advanced a position
19 about operational control?

20 A Yes. We had asked for full operational control.

21 Q Is that reflected in Exhibit 15? That's what you reported
22 to Sargento, or Mr. Beard did?

23 A Yes.

24 Q And I've circled it. Is that where it's located in the
25 exhibit?

1 A Yes, it is.

2 Q How was it that you came into discussions with Sargento
3 about the sale of Portionables?

4 A I had received a correspondence, but I barely looked at
5 it, because I receive -- over the years, I always receive
6 from companies that were interested in buying Portionables.
7 But, personally, I was not really interested in selling the
8 company. I had started the company. You know, it was like
9 my baby, you know. And I was in my 40's. And so I envision
10 for the company and I wanted to carry the vision forward.

11 So I never -- I was never interested in selling the
12 company. But I got a letter from Sargento, and I didn't
13 really pay attention to it. And a month later --

14 Q Let me stop you for a second. So you got a letter from
15 Sargento?

16 A Yeah.

17 Q And was the letter about possibly buying the company?

18 A I think this is what it was --

19 MR. SULKIN: Objection.

20 A -- because when I received it, there was a brochure
21 inside.

22 THE COURT: Just a moment. There's an objection.

23 MR. GOLDFARB: I'll rephrase it, your Honor.

24 Q What was the letter about, sir?

25 A I think there was a letter inside, and it was a brochure.

1 And I thought it was someone trying to sell cheese. So I
2 give it to Ray Wyandt, who is in charge of sales and
3 marketing. I thought it was someone that wanted to sell some
4 cheese. And he came back to me and said, I think this is a
5 company that wants --

6 MR. SULKIN: Objection, your Honor. Hearsay.

7 THE WITNESS: That's fine.

8 THE COURT: Sustained.

9 BY MR. GOLDFARB:

10 Q After receiving the letter that you've described,
11 Mr. Calliari, did you then have communication by telephone
12 with anyone from Sargento about a possible purchase?

13 A Yeah. A gentleman by the name of Bob Clouston called me.

14 Q And did you know Mr. Clouston?

15 A I knew him, yes.

16 Q And what did Mr. Clouston say to you when he called?

17 A First of all, I was surprised. I had not talked to him
18 for a long time. But he mentioned that he was working for
19 Sargento and Sargento was very interested or would be
20 interested in talking to me about purchasing the company.

21 Q And what happened as far as Sargento? What was the next
22 step in the process?

23 A The next step was to -- he convinced me that I should meet
24 Lou Gentine and they should come over and we should meet and
25 I should give them a chance to present their case. So we set

1 up initially a meeting for December, but Lou couldn't make
2 it. He had an emergency. So it was postponed until January.

3 Q The transaction at issue between Portionables and Sargento
4 closed at the end of April of 2007. Counting this first
5 meeting that you've described, how many face-to-face meetings
6 do you recall having with Mr. Gentine?

7 A I would say four.

8 Q Okay. And we'll go back through these in a little more
9 detail, but could you just list for the court what the four
10 meetings were?

11 A The first meeting, Mr. Gentine, Bob Clouston, and another
12 executive by the name of Kevin came to Bellingham to visit
13 me.

14 Q Okay. Why don't we do it this way: Did anything happen
15 at that meeting other than a tour and introductions?

16 A It was a tour and introduction.

17 Q And what was the second face-to-face meeting that you had
18 with Mr. Gentine?

19 A The second face meeting was in Plymouth, at the
20 headquarters of Sargento.

21 Q And that's Plymouth, Wisconsin?

22 A Yes.

23 Q And approximately when did that meeting take place?

24 A In February.

25 Q Now, before that meeting, had there been negotiations or

1 discussions between Portionables and Sargento about an
2 acquisition?

3 A Yes.

4 Q And what, generally, was the state of those discussions
5 when you went to the Plymouth meeting?

6 A When I was in Plymouth, we visited the facility, and we
7 started to get into more details about my employment
8 agreement.

9 Q What was the third meeting that you had face to face with
10 Mr. Gentine?

11 A It was in -- at the airport in Minneapolis, in a small
12 meeting room.

13 Q And what was the fourth meeting?

14 A When we signed the sale of the company in Milwaukee,
15 Wisconsin.

16 Q Now, at the first meeting, there were no significant
17 business discussions, is that true?

18 A Yes.

19 Q And at the last meeting, that was for signing?

20 A Yes.

21 Q And so the deal was already done and the paperwork had
22 been finalized at that point?

23 A Yes. I made the trip to sign the documents.

24 Q So the meetings there, the discussions about the
25 transaction, took place at the second and third meeting, the

1 one at Plymouth and the one at the airport?

2 A Yes.

3 Q Now, in those meetings, did you have conversations between
4 you and Mr. Gentine about an earnout?

5 A Yes.

6 Q Could you tell the court what you recall about those
7 conversations?

8 A Well, we discussed the earnout and the mechanisms of the
9 earnout, the control, the operational control during the time
10 of the earnout, and my employment agreement.

11 Q All right. Did you and Mr. Gentine talk about the
12 purchase price that would be paid up front for the company?

13 A Yes, we did, yeah.

14 Q Okay. And how much was that?

15 A 19 million.

16 Q And did you also talk about an amount that would be paid
17 separately to you under the employment agreement?

18 A Yes. We talked about the million that would be paid to me
19 as a noncompete.

20 Q In these discussions that you were having with
21 Mr. Gentine, was operational control important to you?

22 MR. SULKIN: Objection, your Honor. Leading.

23 THE COURT: Overruled.

24 A Yes. If myself and the other shareholders will accept an
25 earnout, this was it. I will retain the operational control

1 during the time of the earnout.

2 BY MR. GOLDFARB:

3 Q And why did that matter to you to maintain operational
4 control?

5 A Well, if you don't, you are not in charge of your own
6 destiny.

7 Q And with regard to operational control, did you have
8 specific discussions with Mr. Gentine about how that would
9 work?

10 A Well, originally I requested full operational control.
11 And Mr. Gentine narrowed it to some conditions, or some
12 restrictions, I should say, restrictions in the agreements.

13 Q And what specific discussion do you recall having with
14 Mr. Gentine about any restrictions on operational control?

15 A Restrictions are in the agreement. It would put a cap on
16 what I can spend, on capital expenditures, or if I were to
17 enter an agreement with family members or friends, for
18 example.

19 Q And were those things all set forth in the document, the
20 stock purchase agreement, that you signed?

21 A Yes.

22 Q And we looked with another witness, but you were here and
23 heard the testimony, at six items identified in the stock
24 purchase agreement. Were those the things that you discussed
25 with Mr. Gentine?

1 A Yes, these are the six.

2 Q Did Mr. Gentine and you ever discuss that after the
3 transaction closed he would have the authority under the
4 contract to overrule any decision that you would make?

5 MR. SULKIN: Objection. Leading, your Honor.

6 THE COURT: Sustained.

7 MR. GOLDFARB: I'll rephrase, your Honor.

8 Q Other than what you've told us, did Mr. Gentine tell you
9 that there were any other restrictions that he wanted on your
10 operational control?

11 A No.

12 Q And in these two meetings that you identified for us, you
13 also had conversations with Mr. Gentine about the employment
14 agreement?

15 A Yes.

16 Q Did you and Mr. Gentine talk about how long the employment
17 agreement would last?

18 A Yes.

19 Q What do you recall about that conversation?

20 A It was a minimum of five years.

21 Q Did you and Mr. Gentine talk about the salary and benefits
22 that you would receive under the employment agreement?

23 A Yes, of course.

24 Q And how did you arrive at what those salary and benefits
25 would be? Do you recall that discussion?

1 A Yes. The salary would be the salary I had at
2 Portionables. So this would be a continuation. And benefits
3 probably similar. And also, for me, in my employment
4 agreement, I have 5 percent on the future profitability of
5 the company.

6 Q Okay. I want to ask you about that also. Did you have a
7 conversation with Mr. Gentine about future incentives under
8 the employment agreement?

9 A Yes, I did.

10 Q Okay. And tell the court what you recall about that
11 conversation.

12 A Well, for me, if you look at -- I don't know. Maybe you
13 have the offer from the French company. I really wanted to
14 be a part of the future, because, for me, I know where the
15 company was when we sold it, you know. But I knew what I
16 could do in the future. And at the time, I was 49. So I
17 wanted to keep working for the company. I wanted to be a
18 part of the future success of the company.

19 So the French company that was offering to purchase
20 Portionables was offering me to retain 5 percent ownership.
21 So when I started the negotiation with Sargento, I say, for
22 me, if I sell my interest in Portionables, I need to carry
23 forward with same salary, with same benefits, but also I want
24 a part of the future.

25 And Sargento didn't -- they couldn't give me 5 percent of

1 equity because it's a family-owned company, and they didn't
2 have shares available. So they said, we will come up with a
3 formula where you will have a reward for the long-term profit
4 of the company.

5 Q Did you and Mr. Gentine talk about a signing bonus?

6 A Yes, we did.

7 Q Tell us what you recall about that conversation.

8 A Well, I ask, and again I learn through Bill Beard that
9 it's very common in that position that you get a lump sum for
10 a noncompete. And I had a noncompete. A noncompete is if I
11 decide to leave or if I leave a company, I cannot work
12 anymore in the food industry. And it has been over 20 years,
13 so it's difficult for me afterwards to find a job somewhere
14 else. So I requested a million dollars for the noncompete.

15 Q And is that something you discussed with Mr. Gentine?

16 A Yes, I did.

17 Q And what was his response to that?

18 A They came up with a different term. That would be a
19 signing bonus. At the time, you know, I didn't care what
20 they want to call it, because I had a noncompete in my
21 employment agreement, so.

22 Q Did you and Mr. Gentine talk about what would happen if
23 there was a problem with operational control later, after the
24 agreement was signed?

25 A Yeah, we talk about the resigning for cause -- for good

1 reason. Sorry.

2 Q Tell the court what you recall about those conversations.

3 A Well, if I resign for good reason, Sargento would still
4 pay my salary and my benefits, and I will have a reasonable
5 presumption on the earnout.

6 Q And did you feel that those provisions were important to
7 the transaction?

8 MR. SULKIN: Objection. Leading.

9 A Of course. This was the --

10 THE COURT: Sustained.

11 BY MR. GOLDFARB:

12 Q Why did you want to have those provisions in the
13 agreement?

14 A Well, if you don't have these provisions, you can tell me
15 to leave, and I have no way of -- you know, you give up.
16 It's not anymore what you negotiate. You've give them a way
17 to tell me where to go. And basically I lose everything.

18 Q Did Mr. Gentine agree to your conversation about resigning
19 for good reason?

20 A Yes, he did. We signed the contract.

21 Q Let me ask you to look next at Exhibit 3, please. Exhibit
22 3 is the employment agreement?

23 A Yes.

24 Q And we've been through this agreement a lot in this case,
25 so I'm not going to go through it again with you in detail.

1 Did you sign this agreement?

2 A Yes, I did.

3 Q Does this agreement and what's written accurately reflect
4 the agreements that you reached with Mr. Gentine?

5 A Yes.

6 Q And there is, as we've discussed in this trial, a
7 resignation for good reason provision in this agreement. My
8 question is: Have you been paid any amounts by Sargento
9 under the resignation for good reason provision?

10 A No.

11 Q Let me ask you to look at the stock purchase agreement.
12 That is Exhibit No. 3.

13 A Yes.

14 Q Do you have the stock purchase agreement?

15 A Yes.

16 Q Okay. And did you sign the stock purchase agreement as a
17 shareholder of Portionables?

18 A Yes.

19 Q Does the stock purchase agreement as it is written
20 accurately reflect your conversations and agreements with
21 Mr. Gentine?

22 A Yes.

23 MR. GOLDFARB: Your Honor, I'm at a convenient
24 stopping place. It doesn't matter, because my math is wrong.

25 THE COURT: I'm afraid you've got to keep going

1 another 15 minutes.

2 MR. GOLDFARB: I'm sorry, your Honor. I confused
3 myself.

4 Q I'd like to direct your attention now to what happened
5 after the transaction closed. First, do you know a gentleman
6 by the name of Mike McEvoy?

7 A Yes.

8 Q And who do you understand Mike McEvoy to be?

9 A McEvoy is a relative of Lou Gentine.

10 Q And does he also work for Sargento?

11 A Yes, he does.

12 Q And did he have some involvement in the Portionables
13 business after the transaction closed?

14 A Well, after the transaction, he was sent to be at
15 Portionables and live in Bellingham.

16 Q So he relocated to Bellingham?

17 A Yes.

18 Q And how did you feel about that?

19 A Well, I was surprised. I didn't understand why Sargento
20 would send someone to be at Portionables. We're not looking
21 at any -- we didn't need any executives. We were already
22 operational. We had everything covered. We're a company
23 already working, in motion.

24 Q Did you complain to Mr. Gentine about that?

25 A Well, it's an awkward situation. You just signed a stock

1 purchase agreement, and it was family related. So, no, I
2 didn't.

3 Q Do you know someone named Mike Gordy?

4 A Yes.

5 Q Would you tell the court who Mike Gordy is, please?

6 A Mike Gordy is or was -- I don't know if he is still, but
7 he was senior management at Sargento.

8 Q And did Mr. Gordy become involved in the Portionables
9 business?

10 A Yes, he did.

11 Q Would you describe for the court in general how that came
12 about?

13 A Again, shortly after acquisition, Mike Gordy was
14 designated to enter -- basically to enter Portionables.

15 Q And as time went forward in the fall of 2007, how did you
16 evaluate what Mr. Gordy was doing at Portionables?

17 A Well, Mr. Gordy was getting more and more involved, more
18 demanding, more involved. He was bringing his culture. And
19 he wanted to challenge our price, our price structure. He
20 didn't like the way we were doing marketing. We were not
21 efficient enough. He wanted more meetings, more staff
22 meetings, sitting, writing. And it was very disruptive.

23 Q Did he become involved in sales?

24 MR. SULKIN: Objection, your Honor. Leading.

25 THE COURT: Overruled.

1 A Yes, very much.

2 BY MR. GOLDFARB:

3 Q Could you describe for the court briefly again how he
4 became involved in sales?

5 A Well, he was selling sales calls anywhere, almost every
6 time. Ray Wyandt was our salesperson at Portionables. And
7 he would go along with him and bring all the salespeople from
8 Sargento along with them. So, yeah, he was very much
9 involved.

10 Q There's been some conversation in this case about
11 something called direct ship, or direct shipment. Could you
12 explain to the court what direct ship was in connection with
13 Portionables?

14 A Well, you have to understand that Portionables is in a
15 complex in Bellingham. And the complex is called Bellingham
16 Cold Storage. Bellingham Cold Storage provides cold storage
17 for customers. And we decided to build the plant inside the
18 Bellingham Cold Storage facility. So we took an empty
19 warehouse, and we converted it into a production facility.

20 And, initially, when we started the company, we thought
21 that we could have some savings. And I will explain why,
22 because Bellingham Cold Storage, as a cold storage company,
23 has a lot of equipment that produce cold. And when you are
24 in the frozen food business, you need cold ammonia to freeze
25 food product.

1 So we sold some synergy, okay? We build. We transform.
2 We can use their machines. And at the same time, we don't
3 have to build our own cold storage. And so for several years
4 we were using Bellingham Cold Storage. So everything we're
5 producing, we'll take it across the alley, and we'll go into
6 the Bellingham Cold Storage.

7 But we have several customers. After '05, when we built
8 the new facility in South Dakota, all the production that we
9 had in Bellingham went to South Dakota because Unilever took
10 100 percent of our facility in Bellingham.

11 So a year later, I was sitting with my financial officer.
12 I said, well, now we are utilizing Bellingham Cold Storage
13 only for one customer.

14 MR. SULKIN: Your Honor, I object as hearsay.

15 THE WITNESS: How?

16 THE COURT: Overruled. It's a narrative, but it's
17 not hearsay. Pose a question.

18 MR. GOLDFARB: Very well, your Honor.

19 THE WITNESS: I want to explain what I mean, because
20 otherwise nobody understand.

21 BY MR. GOLDFARB:

22 Q That's okay. Let me ask you another question. So after
23 the rest of the production went to South Dakota and you had
24 the single customer in Bellingham, which was Unilever, did
25 your needs for Bellingham Cold Storage change?

1 A Of course, because --

2 Q Excuse me. How did they change?

3 A Because everything we produced for Unilever will need
4 assembly. So Unilever will have trucks waiting, because
5 we're working 24 hour around the clock. So, basically, it
6 didn't make sense to me, logically, to make a product, to
7 send it to the cold storage, pay for cold storage, pay some
8 handling charges, and I would put the product into the truck.

9 So I said, well, if our lease agreement provides we can
10 legally do it, we're not going to use any more cold storage.
11 Let's put the trucks on our own bay and let's load them
12 directly. And I had discussed this with Unilever, and they
13 were okay with it.

14 Q Had you prepared any estimates of how much savings you
15 thought you might be able to achieve by doing that?

16 A I didn't personally, but I have my financial officer to do
17 it.

18 Q Did you have an understanding of what you thought it might
19 be possible to save with direct ship?

20 A The number that was given to me was --

21 MR. SULKIN: Your Honor, I object on what he might
22 have thought. It's not relevant.

23 THE COURT: Overruled.

24 A It was about \$500,000 a year.

25 BY MR. GOLDFARB:

1 Q Was direct ship something that you had thought of before
2 the acquisition or after?

3 A No, it's something I started working on and I had
4 requested my team to look at in spring 2006, early.

5 Q And at the time that you started the discussions with both
6 the French company and later Sargento, had direct shipping
7 been implemented?

8 A No. We were going to implement direct shipment in January
9 '07. This was our projection. This is what we wanted to do.

10 Q And why did you not implement direct shipping at that
11 time?

12 A Because we had concession with a French company for
13 interest in buying Portionables. And Sargento expressed an
14 interest in buying Portionables. So I requested to put the
15 direct shipment on hold until I figured out what's going on
16 with these acquisitions and if we were going to sell the
17 company. I was getting a little bit too distracted, so I
18 didn't want to start direct shipment.

19 Q After the transaction with Sargento closed, were you still
20 interested in direct shipment?

21 A Yes.

22 Q Did you share that with anyone at Sargento?

23 A Yes. And I think it's part of the -- I think we included
24 that also in the sale and purchase agreement, because this is
25 something that was in the works.

1 Q And after the transaction closed, do you recall having
2 conversations with people at Sargento about it?

3 A Yes.

4 Q Did Mr. Gordy know that you were interested in direct
5 shipment?

6 A Yes, he did.

7 MR. SULKIN: Objection. Lack of foundation, your
8 Honor.

9 MR. GOLDFARB: I'll follow up, your Honor.

10 Q How did Mr. Gordy know that you were interested in direct
11 shipment?

12 MR. SULKIN: Same objection, your Honor.

13 THE COURT: Overruled.

14 A Well, first of all, it was part of the transaction. It
15 was known before acquisition that this is what we had the
16 intention to do.

17 MR. GOLDFARB: I'll pose a different question, your
18 Honor.

19 Q What ultimately happened with regard to direct shipment?

20 A Direct shipment never happened.

21 Q Why was that?

22 A I wasn't given the chance to implement direct shipment.

23 Q Were there negotiations after the transaction closed with
24 Sargento, were there negotiations with Bellingham Cold
25 Storage?

1 A There were negotiations, but I wasn't included in the
2 negotiations.

3 Q Who was included in the negotiations?

4 A McEvoy and Mike Gordy.

5 Q And when those two gentlemen commenced those negotiations,
6 did you know that they were taking that action?

7 A Yes.

8 Q Did they follow your desire with regard to direct
9 shipment?

10 A No.

11 MR. GOLDFARB: Your Honor, plaintiff moves the
12 admission of Exhibit 9, which I believe is not objected to.

13 THE COURT: Any objection to 9?

14 MR. SULKIN: No objection, your Honor.

15 THE COURT: 9 will be admitted.

16 (Exhibit(s) 9 admitted.)

17 BY MR. GOLDFARB:

18 Q And, Mr. Calliari, if you could turn to Exhibit 9, please.
19 Exhibit 9, sir, are a couple of different e-mails. The one
20 that's highlighted is September 5 of 2007. Do you see that?

21 A Yes.

22 Q And did you send this e-mail to Mr. Gordy?

23 A Yes, I did.

24 Q And does this e-mail accurately reflect your concerns at
25 the time?

1 A Yes.

2 Q And what was it that had taken place at the time that
3 caused you to write this e-mail?

4 A Because he was in contact with Bellingham Cold Storage and
5 trying to come up with -- or trying to convince me that he
6 could come up with some savings. But he don't make sense.

7 Q At some point in time, did you give up the idea of direct
8 ship?

9 A Yes, I did.

10 Q Would you tell the court why that was?

11 A Because McEvoy and Mike Gordy made a new agreement with
12 Bellingham Cold Storage, and I wasn't involved.

13 Q And how long did those discussions go on?

14 A I believe for several months.

15 Q If you had attempted to implement direct shipment in 2008,
16 would it have been impossible to do that in time to affect
17 the earnout?

18 A I believe so.

19 Q Did you have any concerns with regard to Sargento's
20 involvement on sales calls?

21 A Yes.

22 Q Could you explain to the court what those concerns were?

23 A Well, first of all, Sargento hasn't been selling
24 Portionables products, ever, so first concern. Second
25 concern, during the earnout period, I decide how to conduct

1 the sales of the company. And having Mike Gordy coming and
2 telling us what to do, bringing Sargento salespeople on board
3 and having them making sales calls on our behalf, it's just
4 very disturbing.

5 And they don't know anything about the product. They've
6 been selling cheese for years. It's a totally different
7 universe. So if they wanted to do that after the earnout,
8 well, they own the company, so they have a right to do it.

9 Q Do you know someone named Dan Zinzer?

10 THE COURT: Why don't we stop before we get into who
11 Mr. Zinzer is and take our break.

12 MR. GOLDFARB: Very well.

13 THE COURT: All right. Ladies and gentlemen, let's
14 take our afternoon break.

15 (Jury leaves courtroom.)

16 THE COURT: Okay. Anything else we need to take care
17 of before recess?

18 MR. GOLDFARB: No, your Honor. I thought those
19 packages would brighten it up, but maybe not so much.

20 THE COURT: Well, I don't know. But if you feed
21 them, they'll really fall asleep all right. So we'll have to
22 try something else. I'll get them on their feet a couple
23 more times this afternoon.

24 All right. Let's take our recess.

25 (Brief recess.)

1 THE COURT: Are we ready to bring them in?

2 MR. SULKIN: Yes, your Honor.

3 THE COURT: All right. Please have a seat,
4 Mr. Calliari.

5 (Jury enters courtroom.)

6 THE COURT: Please be seated.

7 All right. Mr. Goldfarb, go ahead.

8 BY MR. GOLDFARB:

9 Q Mr. Calliari, do you know the name Dan Zinzer?

10 A Yes, I've heard of it.

11 Q Okay. At some point did you have concerns about
12 Mr. Zinzer in connection with Portionables?

13 A Yes, I did.

14 Q Could you tell the court briefly what those concerns were,
15 please?

16 A He was interfering with the sales, with the sales process
17 with Birds Eye.

18 Q Who does Mr. Zinzer work for?

19 A He works for Sargento.

20 Q And did you come to an understanding of something or
21 things that he was doing in connection with Birds Eye?

22 A He was working with Mike Gordy. And Mike Gordy was
23 involved with sales and marketing.

24 Q And did you raise concerns about Mr. Zinzer with anyone?

25 A Because Mr. Zinzer was -- he overstep over his boundaries.

1 He was making decisions and actions that we weren't even
2 aware of it.

3 Q And did you raise concerns about that with Mr. Gentine?

4 A Yes, I did. I sent him an e-mail.

5 Q I would like to talk to you next about Unilever. The
6 original Unilever contract, when was that signed?

7 A I believe I signed it in 2004, April 4, 2004.

8 Q And did you negotiate that transaction or that contract?

9 A Yes, I personally did.

10 Q After the transaction closed, did you have conversations
11 with Unilever?

12 A Right after the close, the closing of the transaction, I
13 made a call to Unilever to introduce -- to set up a
14 conference call between myself, between -- actually, I set up
15 a meeting with Unilever in order to introduce Sargento, Mike
16 Gordy and Lou Gentine. But he don't make the meeting because
17 there was a blizzard in the East Coast, so the flight got
18 cancelled. And we did the introduction over the phone.

19 Q After that introductory phone call, what happened next
20 with regard to communication with Unilever?

21 A I did not talk to them until I heard from Mike Gordy that
22 he had a conversation with Unilever.

23 Q Had you authorized Mr. Gordy to have any conversation with
24 Unilever without you?

25 A No.

1 Q And what was your reaction when you found out that he had
2 had a conversation with Unilever?

3 A I was surprised. I was upset. And basically he told me
4 that Unilever was looking at a price reduction. So it was a
5 surprise, a total surprise to me.

6 Q And what was your reaction to the idea of a price
7 reduction for Unilever? What did you think about that?

8 A My personal reaction was, it's out of the question.

9 Q And why, sir?

10 A Well, we had a five-year agreement with Unilever. We were
11 a year and a half into the agreement. It took us six months
12 in 2005 to build -- actually, to transform our facility in
13 Bellingham because we accepted to do business with Unilever.
14 Unilever had a cooking technology. And I had some space
15 available so we could expand our facility in Bellingham.

16 So Unilever brought to us a lot of equipment. We did some
17 constructions. We had our plant in Bellingham that was shut
18 down for some time. And at the end of the day, Unilever
19 invested 10 million dollars in our facility, in equipment, in
20 constructions.

21 And when I talk about equipment, I'm not talking about
22 equipment that you can roll in. Once it's in place, it's in
23 place for good, otherwise you have to start to break walls
24 and break floors and break ceilings in order to take it
25 apart.

1 So I couldn't really make sense of why right after
2 acquisition, why Unilever, you know, is asking for price
3 reductions or why trying to frighten about
4 self-manufacturing. They just invested, you know, in our
5 facility. So it didn't make sense to me.

6 Q And did you send Mr. Gordy an e-mail with regard to his
7 communication with Unilever?

8 A I don't recall exactly. I think I sent an e-mail out at
9 some point in time, yes.

10 Q Let me ask you to look at Exhibit 12, please.

11 MR. GOLDFARB: And, your Honor, at this point in
12 time, we move the admission of 12, which is unopposed on the
13 exhibit list.

14 MR. SULKIN: No objection, your Honor.

15 THE COURT: 12 is admitted.

16 (Exhibit(s) 12 admitted.)

17 BY MR. GOLDFARB:

18 Q Do you have Exhibit 12 before you?

19 A Yes, I do.

20 Q And this is an e-mail that you sent to Mr. Gordy in August
21 of 2007?

22 A Yes.

23 Q And in this e-mail, you talk about you don't want another
24 Unilever scenario?

25 A Yes.

1 Q Can you explain to the court what you meant by that?

2 A Well, I didn't want another situation where Mike Gordy
3 makes contact with our customer and afterwards I have to deal
4 with the facts, you know, afterwards, because I have to deal
5 with problems.

6 Q Were you asked at some point in August of 2007 to sign a
7 letter to send to Unilever?

8 A I'm sorry. I did not hear.

9 MR. SULKIN: Objection. Leading, your Honor.

10 THE COURT: Overruled.

11 BY MR. GOLDFARB:

12 Q Were you asked to sign a letter to Unilever in August of
13 2007?

14 A Yes.

15 Q Did you draft that letter yourself?

16 A No.

17 Q Did you agree with the business judgment of sending that
18 letter?

19 MR. SULKIN: Objection. Leading, your Honor.

20 THE COURT: Sustained.

21 MR. GOLDFARB: I'll rephrase, your Honor.

22 Q What was your feeling about the merits of sending that
23 letter? That's a bad question.

24 Did you think it was a good idea to send the letter?

25 A No, it wasn't a good idea. I would have never done it

1 myself.

2 Q After sending that letter, how much time passed before you
3 understood that Unilever had responded to it?

4 A A long time. Several months.

5 MR. GOLDFARB: Your Honor, at this time we move the
6 admission of Defendant's Exhibit 207.

7 MR. SULKIN: No objection, your Honor.

8 THE COURT: 207 will be admitted.

9 (Exhibit(s) 207 admitted.)

10 BY MR. GOLDFARB:

11 Q Do you have Exhibit 207?

12 A I thought you were going to put it on the screen.

13 Q I will in a second.

14 A All right. No, I don't have it here.

15 Q I'll just put it on the screen.

16 A Oh, okay. It's here.

17 Q Exhibit 207 is an e-mail from Mr. Gordy that you were
18 copied on, dated March 7, 2008?

19 A Yes.

20 Q And attached to it is a draft amendment of the
21 manufacturing agreement?

22 A Yes.

23 Q And prior to this e-mail, do you recall whether you had
24 seen any draft amendment?

25 A No.

1 Q When you got this draft amendment, what was your reaction
2 to it?

3 A I was angry.

4 Q Did you communicate with Mr. Ioannides about it?

5 A Yes, I did.

6 Q Is that the reason that he came over to the United States?

7 A Yes.

8 Q Did you attend a meeting at Portionables with
9 Mr. Ioannides and Mr. McEvoy on March 26 of 2008?

10 A Yes.

11 Q And what was the purpose of that meeting?

12 A To explain to Mr. McEvoy and to have a chance to meet with
13 a representative from Sargento. And McEvoy was a relative
14 from the Gentine family and was basically the representation
15 of Sargento at Portionables.

16 Q And did Mr. McEvoy make any request of you and
17 Mr. Ioannides at that meeting?

18 A Yes, that we should express our concern to Lou Gentine.

19 Q Did he tell you to put it in a letter?

20 A Yes, he did.

21 Q And did you engage your attorneys to prepare that letter?

22 A Yes.

23 Q And is Exhibit 13 -- I'll just put it on the screen. Is
24 Exhibit 13 the letter that you engaged your attorneys to
25 prepare?

1 A Yes.

2 Q And did that letter accurately set forth your concerns at
3 the time?

4 A Yes.

5 Q Do you recall having a telephone conversation with
6 Mr. Gentine a few days later?

7 A Yes.

8 Q Did you share the same concerns with Mr. Gentine by phone?

9 A Yes.

10 Q Were you aware of a letter in April indicating that you
11 were not to have contact with Unilever without Mr. Gentine's
12 permission?

13 A Yes.

14 MR. SULKIN: Objection. Leading, your Honor.

15 THE COURT: Sustained.

16 MR. GOLDFARB: I'll rephrase.

17 Q Could you look at Exhibit 16, please? Exhibit 16 is an
18 April 11, 2008 letter to Jeffrey Miller. Do you see that?

19 A Yes.

20 Q And was Mr. Miller representing you individually at that
21 time?

22 A Yes.

23 Q And were you made aware of this letter?

24 A Yes.

25 Q After this letter, were you included in any communications

1 with Sargento relating to Unilever?

2 A No.

3 Q Did you know at the time of this letter whether the
4 amendment had been signed or not?

5 A No.

6 Q Did you request mediation?

7 A I did.

8 Q And what was your purpose in doing that?

9 A Trying to resolve these issues.

10 Q And after mediation, did you authorize the submission of
11 an additional letter to Sargento?

12 A Yes, I did.

13 Q And is Exhibit 14 that letter?

14 A Yes.

15 Q And this letter was prepared by your counsel?

16 A Yes.

17 Q And authorized by you?

18 A Yes.

19 Q And you understood in this letter that you were requesting
20 that Unilever cure -- I'm sorry -- that Sargento cure certain
21 defaults that you were claiming under the employment
22 agreement?

23 A Yes.

24 Q And to your knowledge, were any of those defaults cured by
25 Sargento?

1 A No.

2 Q Did you resign your employment from Portionables?

3 A Yes, I did.

4 Q And is Exhibit 58 your letter of resignation?

5 A Yes.

6 Q Do you know a gentleman by the name of Karl Linck?

7 A Yes, I do.

8 Q And who do you understand Mr. Linck to be?

9 A He is in charge of, generally, Sargento.

10 Q In 2007, did you have some dealings with Mr. Linck?

11 A Very limited dealings. At the request of Lou Gentine, I
12 took him to Sweden with me to meet the executive for
13 Frigoscandia. Frigoscandia is the equipment manufacturer
14 that makes freezers for Portionables. So Mr. Gentine wanted
15 me to have him introduced to them since they were all in the
16 company.

17 Q In 2008, did you have any dealings whatsoever with
18 Mr. Linck, that you recall?

19 A I don't recall.

20 Q Were you aware of any regulatory issues in South Dakota?

21 A No, I wasn't. I just came across a few e-mails, but I
22 wasn't.

23 Q Did Mr. Gordy communicate with you about Mr. Linck in
24 connection with South Dakota?

25 A No.

1 Q Did Mr. Gordy tell you that Mr. Linck was planning to go
2 and meet with representatives of South Dakota in connection
3 with regulatory issues there?

4 MR. SULKIN: Objection. Leading, your Honor.

5 THE COURT: Sustained.

6 MR. GOLDFARB: I'll rephrase, your Honor.

7 Q Did Mr. Gordy tell you anything about activities Mr. Linck
8 was engaged in in South Dakota?

9 A No.

10 Q Did you have any knowledge that Mr. Linck was meeting with
11 representatives in South Dakota on behalf of Portionables?

12 A No.

13 Q Did you know that Sargento had retained attorneys in
14 connection with Portionables' issues in South Dakota?

15 MR. SULKIN: Objection. Leading.

16 MR. GOLDFARB: I'll rephrase again, your Honor. I'm
17 sorry.

18 Q Were you aware that Sargento had retained any attorneys to
19 look out for interests of Portionables?

20 MR. SULKIN: Same objection, your Honor.

21 THE COURT: Sustained.

22 BY MR. GOLDFARB:

23 Q Did you know whether Sargento had retained counsel for
24 Portionables?

25 A No.

1 MR. GOLDFARB: I have no further questions, your
2 Honor.

3 THE COURT: Ladies and gentlemen, how would you like
4 to stand up and take a stretch here?

5 Okay. Ready to go?

6 MR. SULKIN: I am, your Honor.

7 THE COURT: All right. Please be seated.

8 Go ahead, Mr. Sulkin.

9 CROSS-EXAMINATION

10 BY MR. SULKIN:

11 Q Good afternoon, Mr. Calliari.

12 A Good afternoon.

13 Q It's fair to say you did not ask Mr. Gentine to agree in
14 writing to direct ship as part of the stock purchase
15 agreement?

16 A Can you rephrase the question, please?

17 Q You did not ask Mr. Gentine to agree in writing to direct
18 ship?

19 A No.

20 Q And you did not ask Mr. Gentine to agree in writing to
21 credit instant earnout if Sargento decided to not direct
22 ship?

23 A I'm sorry. Your first question, was it prior to
24 acquisition or after?

25 Q Let me rephrase. At the time of the stock purchase

1 agreement, you did not ask Mr. Gentine to agree in writing to
2 credit against the earnout if Sargento decided to direct
3 ship?

4 A No.

5 Q Now, you raised the issue of direct shipping with
6 Mr. Thomas, the president of Bellingham Cold Storage, didn't
7 you?

8 A Yes.

9 Q He was angry when you told him that you were thinking of
10 direct shipping, wasn't he?

11 A Yes. And I wasn't surprised.

12 Q He told you that under the contract you did not have the
13 right to direct ship?

14 MR. GOLDFARB: Hearsay, your Honor.

15 THE COURT: Sustained.

16 MR. SULKIN: Your Honor, if I may respond. One, it
17 goes to his state of mind. And, two, he testified about it
18 in his deposition, which I can just play.

19 THE COURT: Well, then maybe that's what you should
20 do.

21 MR. SULKIN: Okay. That's fine, your Honor.

22 THE COURT: But it still has the same effect whether
23 he says it here or he says it in his deposition.

24 MR. SULKIN: But --

25 THE COURT: It's still hearsay, if it's

1 Mr. Calliari's deposition we're talking about.

2 MR. SULKIN: It is Mr. Calliari's deposition, but it
3 goes to -- my point is that it goes to Mr. Calliari's state
4 of mind. That's why I asked the question. But I'll move on.

5 Q You claim that while you owned Portionables you had Betty
6 Crouse and David Riley do an analysis of direct shipping?

7 A Yes.

8 Q You claim they did this analysis in 2006?

9 A Yes.

10 Q And it's fair to say, sir, that if there was a storm and
11 the trucks could not get to Portionables, that would be a
12 real problem?

13 A It's possible. I'm not a logistic specialist.

14 Q And if that happened, you'd need Plan B, wouldn't you,
15 sir?

16 A Yes.

17 Q And you had no Plan B?

18 A I thought we did.

19 Q In fact, sir, you knew you had no Plan B? You did not
20 know if one had been developed or not?

21 A Well, I had people working on the plan.

22 Q You had not seen a Plan B; isn't that the truth?

23 A I had seen several plans.

24 Q You had seen several plans. You don't know whether Plan B
25 was ever developed, do you, sir?

1 A Again, you know, I just have talked and seen many
2 different scenarios from my plant manager.

3 MR. SULKIN: Your Honor, may I approach?

4 THE COURT: Yes.

5 MR. SULKIN: Your Honor, is my copy okay for you?

6 THE COURT: Well, aren't you going to need it?

7 MR. SULKIN: I have notes pretty well in my --

8 THE COURT: Okay.

9 BY MR. SULKIN:

10 Q Would you take a look, sir, at page 90, lines 12 through
11 15, and page 90, 16 through 23.

12 MR. SULKIN: Your Honor, I would like to play those
13 clips after you have had a chance to read those questions and
14 answers.

15 THE COURT: Go ahead.

16 MR. SULKIN: Play clip 34, please, and clip 35.

17 (Video played.)

18 BY MR. SULKIN:

19 Q Sir, you never saw a final typed-up version of a plan
20 regarding shipping, did you?

21 A As I told you, I saw several scenarios. This is what I
22 saw.

23 MR. SULKIN: Let's take a look at page 88, lines 13
24 through 15, your Honor.

25 A Which page, please?

1 BY MR. SULKIN:

2 Q I'm sorry. Page 88, lines 13 through 15.

3 THE COURT: Go ahead.

4 MR. SULKIN: Please play 36.

5 (Video played.)

6 BY MR. SULKIN:

7 Q Do you recall, sir, Mr. Jim Hart?

8 A Yes.

9 Q And who is Jim Hart, sir?

10 A Jim Hart used to be the quality assurance manager.

11 Q I'm sorry. I didn't hear that.

12 A Jim Hart used to be the quality assurance manager.

13 Q At Portionables?

14 A At Portionables.

15 Q Did you see a plan that he drew up?

16 A He was working in collaboration with Tom Kyle.

17 Q Take a look at Exhibit 50.

18 A I don't have it.

19 Q It's one I added during Mr. Goldfarb's examination. I
20 apologize. Take a look at the second page of the document.

21 MR. SULKIN: I don't believe there's any objection to
22 its admittance, your Honor.

23 MR. GOLDFARB: No objection.

24 THE COURT: 50 will be admitted.

25 (Exhibit(s) 50 admitted.)

1 BY MR. SULKIN:

2 Q Had you seen this document before, sir?

3 A I may have, but I don't recall.

4 Q Well, let's just quickly go through it. Page 1, C,
5 options, do you see that?

6 A Yes.

7 Q It says: Product risk high. Shutdown risk high.
8 That's not good, is it?

9 THE COURT: I'm sorry. Where are you reading?

10 MR. SULKIN: I'm sorry, your Honor. It's the second
11 page of the document, the first page of the analysis,
12 paragraph C, options, paragraph No. 1.

13 Q It's fair to say, where it says, product risk high,
14 shutdown risk high, that's not good?

15 A Well, this is -- whose assessment is this?

16 Q It's Mr. Hart's. Well, let's go to the first page.
17 McEvoy writes: I'm doing some digging and I found this
18 assessment done by Jim Hart on 5/22/07.

19 The question is: It's fair to say that if product risk is
20 high and shutdown risk is high, that's not good?

21 A There's always a risk when you try something new.

22 Q I'm sorry if my question wasn't clear. My question was:
23 Is it good if the product risk is high and the shutdown risk
24 is high? Is it good or is it bad or is it somewhere in the
25 middle?

1 A I would say somewhere in the middle.

2 Q Okay.

3 A The way we look at it.

4 Q Next, it says, in paragraph 2: Take the risk that a
5 trailer be loaded off the line and maintain temperature well
6 enough until it is sealed. And it goes on, and it says:
7 Product risk high. Shutdown risk low.

8 Was that good to have a high product risk, sir?

9 A No. But, again, you are using -- this is probably one
10 scenario of -- one possibility that Mr. McEvoy found at the
11 plant. I'm pretty sure we had more than that.

12 Q Well, we've been through your documents, and we didn't
13 seen anything else, sir.

14 A Well, you own Portionables. It's at the plant.

15 Q And your lawyers went through the documents, and they
16 haven't found anything, sir. Let's move on.

17 The fact is, isn't it, sir, Mr. Kyle -- first, who is
18 Mr. Kyle?

19 A Mr. Kyle used to be the plant manager.

20 Q Worked for you?

21 A Yes.

22 Q And he told you it would be a real challenge to direct
23 ship, didn't he?

24 A Yes. A challenge doesn't mean it is impossible.

25 Q And you owned Portionables in 2005, is that right?

1 A Excuse me?

2 Q You owned Portionables in 2005?

3 A Yes.

4 Q Did you direct ship?

5 A No.

6 Q You owned Portionables in 2006. Did you direct ship?

7 A No.

8 Q You owned Portionables the first three months of 2007.
9 Did you direct ship?

10 A No.

11 Q Take a look, if you would, at Exhibit 271. This is an
12 e-mail dated July 31 from Mr. Hoff to you. Do you have any
13 doubt you received it, sir?

14 A If this is what it says, I did receive it.

15 Q This was during the ordinary course of business. We'll
16 focus just on that top e-mail, sir, during the ordinary
17 course of business, right?

18 A Yeah.

19 MR. SULKIN: Your Honor, I move to admit at least the
20 top portion of Exhibit 271.

21 MR. GOLDFARB: Hearsay, your Honor.

22 MR. SULKIN: Your Honor, it goes to his state of mind
23 since he received it. He just claimed that Bellingham Cold
24 Storage was taken from him, and this just goes to notice to
25 him on the issue.

1 THE COURT: Sustained.

2 BY MR. SULKIN:

3 Q You were told on July 31 through an e-mail, were you not?
4 You were informed in an e-mail on July 31 by Mr. Hoff that --

5 MR. GOLDFARB: Excuse me, your Honor. This seems
6 like the same hearsay problem.

7 MR. SULKIN: It's not hearsay to ask him what he was
8 told by my people.

9 MR. GOLDFARB: How is that different from what they
10 said?

11 THE COURT: Sustained.

12 BY MR. SULKIN:

13 Q Did you know in July -- did you know that people at
14 Sargento -- did you ask Mr. Hoff to get involved in
15 Bellingham Cold Storage negotiations?

16 A I don't recall that I asked him to get involved in the
17 negotiations. I had a conversation with Mr. Hoff. And I say
18 that my legal counsel are of the opinion that we can legally
19 do direct shipment, but it would not hurt if you ask your
20 legal counsel, Bob Henkle, to get his opinion before we
21 proceed. This is the extent that I asked Mr. Hoff to be
22 involved.

23 Q You didn't know that Mike McEvoy was negotiating with
24 Mr. Thomas of Bellingham Cold Storage? Is that what you're
25 telling me?

1 A I learned after the fact.

2 Q You didn't know from July 31, 2007, forward, that Mr. Hoff
3 and Mr. McEvoy and Mr. Gordy were negotiating at your behalf
4 at your request with Bellingham Cold Storage?

5 A Not at my request. If you show me a document that says
6 that I requested these three gentlemen to go to Bellingham
7 Cold Storage and to negotiate on my behalf, I would --

8 Q Did you know that Mr. Hoff was talking to Mr. Thomas?

9 A No, I did not know.

10 Q Take a look at Exhibit 271. I'll ask you if that
11 refreshes your recollection as to whether you knew?

12 A Which exhibit is it, please?

13 Q 271. Does that refresh your recollection that you knew in
14 July of 2007 that Mr. Hoff was involved with Bellingham Cold
15 Storage?

16 A Well, it says here: Patrick, please accept my apologies.

17 MR. GOLDFARB: Excuse me. Not proper use of the
18 document to refresh recollection, your Honor.

19 THE COURT: I don't believe there was any question in
20 front of him. So why don't you wait, Mr. Calliari, until
21 there's a question or you are asked to do something. Just
22 take a look and read it to yourself.

23 BY MR. SULKIN:

24 Q And when you're done, let me know, sir.

25 A Okay. Go ahead.

1 Q Does that document refresh your recollection as to your
2 knowledge concerning the involvement of Mr. Hoff and others
3 relating to Bellingham Cold Storage? That's a yes or no
4 question.

5 A Yes.

6 Q And tell me what you now recall.

7 A Can I read what it says? This is my recollection.

8 Q I want to know what your recollection is.

9 A Oh. Well, it's just I didn't read. You asked me if I
10 recall about these documents, so.

11 Q I understand that it's a long time ago. So now that you
12 do remember, what is it that you remember about that subject?

13 A Well, Mr. Hoff says he has been working with Mike Gordy
14 and Mike McEvoy on the subject. And he was sorry, apologetic
15 that he get back to me so late.

16 Q And so by July, you knew that. Did you tell Mr. Hoff:
17 Don't do that anymore?

18 A We had conversations, I'm pretty sure, but.

19 Q Take a look at Exhibit No. 10, sir.

20 MR. SULKIN: I don't believe there's any objection to
21 this. May I publish to the jury, your Honor? I offer 10.

22 MR. GOLDFARB: No objection, your Honor.

23 THE COURT: 10 will be admitted.

24 (Exhibit(s) 10 admitted.)

25 BY MR. SULKIN:

1 Q This is an e-mail from Mike Gordy to Mr. Gentine, you,
2 Mr. Hoff, Mr. McEvoy, dated September 27, '07, correct?

3 A Yes.

4 Q Blow up the bottom. And the subject: Notes from a
5 meeting from Bellingham Cold Storage, 9/25/07. Do you see
6 that? That's in the subject line.

7 A Yes.

8 Q Now, did you, when you received this, complain about
9 Mr. Gordy's involvement?

10 A I complained in several phone calls, several times, you
11 know. I should have been the one involved since day one.

12 Q Mr. Calliari, as I see it, this was sent to you?

13 A Yes, of course it's sent to me. It doesn't mean that I
14 should not be involved. I should be the one to send it.

15 Q Now, Mr. Calliari, isn't it true that you believe
16 Mr. Thomas did not want to talk to you anymore about this
17 subject?

18 A Yes, he was upset.

19 Q And that's why you wanted Mr. Gordy and others to help you
20 get a deal with Mr. Thomas, because he wouldn't talk to you
21 anymore, isn't that right?

22 A Sargento wanted to restore communication on behalf of
23 Portionables with Bellingham Cold Storage.

24 Q And you put nothing in writing to Mr. Gordy by e-mail,
25 napkin, letter, or anything telling him to stop, did you?

1 A I talk.

2 Q You put nothing in writing to Mr. Gentine asking him to
3 step in, did you?

4 MR. GOLDFARB: Excuse me. Objection. Argumentative.

5 THE COURT: Overruled.

6 A I did express my concern. I'm pretty sure I did talk over
7 the phone or in person with this gentleman.

8 BY MR. SULKIN:

9 Q I'm sorry if my question wasn't clear. My question was:
10 Did you put anything in writing to Mr. Gentine on this
11 subject?

12 A If you don't have it here, then, no, I didn't.

13 Q Did you put anything in writing to Mr. Hoff or Mr. McEvoy
14 on this subject?

15 A No.

16 Q All right. Let's go through this document. You testified
17 that you could save \$500,000 a year by direct shipping. Do I
18 have that right?

19 A These were the figures my financial officer gave me.

20 Q Mr. Gordy -- let's look at the first bullet point. He
21 writes: We discussed the current proposed savings available
22 if we were to ship to Unilever direct by bypassing Bellingham
23 Cold Storage. Savings of 26 million pounds equals \$384,000
24 in gross savings. Do you see that?

25 A Yes.

1 Q Gross savings means it's not profit, you still have costs
2 involved there, right?

3 A Yes.

4 Q Okay. And if we go down to the fifth bullet point,
5 Mr. Gordy writes: If we don't get concessions at the desired
6 level from Bellingham Cold Storage, we agree to initiate a
7 detailed plan from Portionables on how they would execute
8 direct shipments, including but not limited to additional
9 costs incurred, spotting of trailers, base available for
10 trailers, equipment, contingency plans, et cetera. Mike
11 McEvoy and Tom Kyle would lead this effort.

12 Do you see that?

13 A Yes.

14 Q So you understood that Sargento would look at direct
15 shipping if it couldn't cut a reasonable deal with Bellingham
16 Cold Storage, isn't that true, sir?

17 A This is what he may have suggested.

18 Q And you didn't write back and say something along the
19 lines of, gee, stop, I don't want you to try to negotiate a
20 deal with Bellingham Cold Storage? You didn't do that, did
21 you, sir?

22 A No, but I had conversations with Lou Gentine about it.

23 Q You had conversations with Mr. Gentine about it. And if
24 he says they didn't occur, that's just someone's memory's
25 wrong?

1 A Of course.

2 Q Take a look, if you would, at Exhibit 257.

3 MR. SULKIN: I don't believe there's any objection to
4 this one, your Honor.

5 MR. GOLDFARB: No objection, your Honor.

6 THE COURT: 257 is admitted.

7 (Exhibit(s) 257 admitted.)

8 BY MR. SULKIN:

9 Q This is an e-mail from Mr. McEvoy to you dated January 7,
10 2008, is that right?

11 A Yes.

12 Q Subject: BCS rebate incentive addendum. Do you see that?

13 A Yes.

14 Q And go to the second page of that document, please. That
15 is sort of a draft deal that had been reached with Bellingham
16 Cold Storage?

17 A Yeah.

18 Q So he was sending it to you. It hadn't been signed yet.
19 He was sending it to you for your review, isn't that right?

20 A Yes.

21 Q Okay. Go to the first page. Mr. McEvoy writes: Happy
22 New Year, Patrick. Tom -- is that Mr. Kyle?

23 A Yes.

24 Q Told me that you have decided to forego the direct ship
25 project. Simultaneously, we were working on the attached

1 addendum to BCS to implement the volume-based rebate
2 incentive that they had presented to us a few months back.
3 BCS drew up the addendum, and Bob Henkle reviewed the
4 document and recommended several changes that are now part of
5 the final draft. Please review the document at your earliest
6 convenience. We'll also need your signature to proceed.
7 Please call with any questions.

8 Do you see that?

9 A Yes.

10 Q In fact, you did tell Mr. Kyle that you decided to forego
11 the direct ship project, didn't you?

12 A I did.

13 Q And, in fact, you directed Mr. McEvoy to sign the deal
14 with Bellingham Cold Storage, didn't you?

15 A I did.

16 Q And that deal saved Portionables \$130,000 a year, didn't
17 it?

18 A Well, this is what it was intended. I don't know the
19 final number.

20 Q And just so we're clear, Mr. McEvoy was sent to
21 Bellingham, is that right?

22 A Yes.

23 Q His salary, though, was not being charged to Portionables;
24 it was being charged to Sargento, is that right?

25 A Yes.

1 Q And the work Mr. Gordy was doing, whether you agreed with
2 it or not -- and we're going to get into it -- his salary was
3 not being charged to Portionables; it was being picked up by
4 Sargento, isn't that right?

5 A Yes.

6 Q I would like you to take a look, if you would, at Trial
7 Exhibit 12. Let me know when you have it in front of you,
8 sir.

9 A I do have it.

10 Q Okay. Mr. Goldfarb showed you that top part. If we could
11 just blow that up. There. I would like to show you the
12 bottom part, okay? Please include the August 15, 2007, the
13 line above.

14 Mr. Gordy writes back: Good morning, Patrick. I was
15 thinking about your phone call yesterday and wanted to follow
16 up.

17 Do you see that?

18 A Yes.

19 Q Now, this phone call from Mr. Gordy would have happened on
20 August 14th, correct? His e-mail was August 15th. We can
21 presume it happened August 14th?

22 A Yes.

23 Q And your conversation with Mr. Ioannides happened two days
24 before that, didn't it, on August 12th? Take a look at
25 Exhibit 233 real quickly. I think it's on your monitor, if

1 you want to just look at it. Fair enough, it was sent on
2 August 12, just two days earlier?

3 A Yes.

4 Q Okay. I want to look at what Mr. Gordy wrote to you.
5 Let's go to the bottom of the page. Pull up that second to
6 last paragraph, please, beginning with "finally." We're back
7 to 12.

8 Mr. Gordy writes: Finally, the most concerning point of
9 the conversation was your indication that I would be
10 negotiating prices on Portionables' behalf on both calls. I
11 don't know what prior action on my part would prompt this
12 concern. I will advise you on pricing and communicate
13 customer concerns, if any, over price quotes. As I
14 explained, it is not my role to negotiate pricing. It is
15 your role.

16 He wrote you that, did he not, sir?

17 A That is what he said.

18 Q And then he writes, on the last -- go down to the third to
19 the last line. He writes: The value -- the one service --
20 I'm sorry. The one value I bring to Portionables is my sales
21 management experience and advocacy of superior customer
22 support and service. Whether you choose to use me as a
23 recourse -- I think he meant resource -- is your decision.

24 He wrote you that, did he not, sir?

25 A Yes, he did.

1 Q So are you telling me, sir, that after telling you it was
2 up to you whether you wanted to use him or not, that you
3 called Mr. Gordy and said, I don't want to use you, and he
4 kept doing it?

5 A Well, actions speak louder than words.

6 Q I agree. Let's take a look at the last paragraph. Now,
7 who is Mike Pusterla? He's with Unilever?

8 A Yes.

9 Q Now, you testified to Mr. Goldfarb that you were concerned
10 that Mr. Gordy had gotten involved with Unilever. Do you
11 recall that testimony?

12 A Yes.

13 Q Mr. Gordy wrote you back: Finally, for the record, after
14 you and I discussed Mike Pusterla's role, I directed all
15 conversations regarding the new opportunity to you. There
16 was a call from Mike after the conference that he initiated.
17 I have made no calls to Unilever other than an e-mail to Mike
18 requesting Steve's contact information and if they received
19 the meeting notes. I will forward that e-mail to you.

20 Do you see that?

21 A Yes, I see it.

22 Q And you have no doubt he did that?

23 A This is what he said. This whole e-mail is very
24 defensive. Why be so defensive if you have no guilt?

25 Q I appreciate that. Let's go to the third paragraph. You

1 testified about your concern regarding Birds Eye. Do you
2 recall that, sir?

3 A Yes.

4 Q And Mr. Gordy addressed that concern with you, didn't he,
5 your phone call and this letter. And he writes: In regards
6 to making the Birds Eye call, I was asked to make that call
7 with Dave in Ray's absence.

8 Who is Dave?

9 A I'm going to assume it's Dave -- I don't know.

10 Q If you don't know, that's okay. And Ray is Ray Wyandt?

11 A Ray Wyandt, yes.

12 Q I was working off of the agenda provided for the Sargento
13 portion of the meeting, the very short overview of Sargento
14 that leads into why we purchased Portionables and what the
15 benefits will be to Birds Eye. I read my outline to you and
16 have attached a copy for your review. This is not a Sargento
17 call, it's a Portionables call, with the Sargento portion
18 adding credibility.

19 Did you write Mr. Gordy and tell him: I don't want you
20 doing that anymore?

21 A No.

22 Q I'd like you to take a look at Exhibit 13, sir. This is
23 the letter your lawyer wrote setting forth your concerns of
24 loss of control, is that right?

25 A Yes.

1 Q And is it fair to say that this is the first written
2 statement you made claiming you had loss of control?

3 A Yes.

4 Q Now, I wrote this down. At 3:15 you were asked whether
5 this letter, quote, accurately sets forth your concerns. And
6 your answer was yes, is that fair?

7 A Yes.

8 Q Okay. Can you show me in this letter where your concern
9 about Mr. McEvoy that you talked so much about earlier is set
10 forth?

11 A It is not in the letter.

12 Q Can you show me where in this letter the concern that you
13 talked so much about with Mr. Goldfarb is set forth in this
14 letter?

15 A Mr. Goldfarb?

16 Q I'm sorry. I'm sorry.

17 MR. SULKIN: You've done nothing wrong, Mike.

18 MR. GOLDFARB: I'll have to get a lawyer.

19 MR. SULKIN: The cheese is getting to me, and I have
20 one more question left.

21 Q Is there anywhere in this letter where you set forth the
22 concerns you talked to Mr. Goldfarb about this morning
23 related to Mr. Gordy?

24 A No.

25 Q And you were trying to be accurate in this letter, were

1 you not, sir?

2 A I was raising the main points.

3 Q This letter is written on behalf of you and Mr. Ioannides
4 as shareholders, is it not?

5 A Yes.

6 Q And you did not tell Mr. Ioannides that Unilever had
7 threatened to self-manufacture, did you, sir?

8 A Not directly, no.

9 Q You did not tell Mr. Ioannides that under the new deal
10 Unilever guaranteed a minimum level of production that was
11 higher than the previous levels of what production had been,
12 did you, sir?

13 A No.

14 Q And you didn't tell Mr. Ioannides that the projected
15 volume under the new contract would result in higher revenues
16 to Portionables than you had projected?

17 A The new contract was not finalized, so I couldn't be
18 accurate.

19 Q So did you tell Mr. Ioannides that the projected volumes
20 in your August 16th letter were going to result in higher
21 revenues to Portionables than under the existing contract?

22 A I'm afraid I do not understand the question, sir.

23 Q I'm sorry. I'll try it again. The August 16th letter you
24 sent, which we're going to get to, that you signed, did you
25 tell Mr. Ioannides that the volumes projected under that

1 contract were going to result in higher revenues to
2 Portionables than under the existing contract?

3 A The offer? You are talking about the offer, not the
4 contract?

5 Q Yes.

6 A There is a big difference. The offer, yeah.

7 Q Did you tell him that?

8 A I don't recall exactly what I told him.

9 MR. SULKIN: Your Honor, this would be a good place
10 for me to stop.

11 THE COURT: All right. Thank you, sir. You can step
12 down.

13 All right. Ladies and gentlemen, it's time to go home.
14 Two nights with the friends and relatives. Did they keep
15 after you last night asking questions? No? Anybody yes?
16 No. Okay. It takes about three days before they give up.
17 But sometimes they come back around and sneak up on you.

18 So, please, remember no talking about the case, no
19 research, no investigation. Clear this case completely out
20 of your mind. I don't want anybody stalking the frozen food
21 cases to pick out product, none of that, okay?

22 Go home. Do something else. Enjoy yourself. Come back
23 to us tomorrow refreshed, having kept your promise to us that
24 you will remember the most important position you can hold is
25 to be fair and to give the appearance of fairness.

1 Hope you have a nice evening. We'll see you tomorrow,
2 same time.

3 (Jury leaves courtroom.)

4 THE COURT: Okay. Let's talk about where we are.
5 Ahead? Behind? On time?

6 MR. SULKIN: We will finish, I think, certainly this
7 week. So in that sense, we're ahead. I had hoped that we
8 could end perhaps as early as tomorrow. And it may be that
9 we can get all the testimony in tomorrow.

10 MR. GOLDFARB: I think so.

11 THE COURT: Okay. You think so?

12 MR. GOLDFARB: I do.

13 THE COURT: Then I need for you to get me any
14 additions to your jury instructions by tomorrow so that we
15 can have a final set put together. We've made a lot of
16 changes, and you've entered into a lot of agreements since we
17 put together the verdict form.

18 So I need a new run at your verdict form. Just what is it
19 that you want to get out of the jury? What questions do you
20 want them to respond to? So if you could do that for me, is
21 tomorrow morning too soon?

22 MR. SULKIN: We will do that, your Honor.

23 THE COURT: Okay. Well, tell me if it's not, because
24 what I'm going to try to do is, you know, if you are looking
25 at getting done tomorrow, then we would be arguing on Friday.

1 So we need some time to look at these things.

2 MR. SULKIN: Yes, I think there's a decent chance the
3 evidence will be done tomorrow and we will do closing Friday
4 morning and they would be deliberating in the afternoon, at
5 least that's my goal.

6 THE COURT: All right. Then I need some time to see
7 what your proposals are. Now, it's fine for you to come back
8 and say: We have nothing new. We'll go off what we've got.

9 But I'm assuming we're going to face some half-time
10 motions. And the verdict forms need some work. And you know
11 what happens if I don't like what you turn in; I just write
12 them myself. So save me from that, huh? Give me some ideas.

13 All right. Anything else we need to take care of? What
14 are we going to do tomorrow?

15 MR. SULKIN: Your Honor, I'd like to do literally a
16 one-minute offer of proof on this document.

17 THE COURT: This document, meaning?

18 MR. SULKIN: I'm sorry. The mediator's nonbinding
19 recommendation. I just want to put it in as an offer of
20 proof.

21 THE COURT: Okay.

22 MR. SULKIN: I have a little bit more time, but
23 Mr. Calliari, I don't think, a ton more time. And then I
24 believe they intend to call Mr. McEvoy.

25 MR. GOLDFARB: Mr. McEvoy, which is a short to medium

1 witness. And then we plan to read a short bit of Mr. Gordy.

2 MR. SULKIN: And then we would call Mr. Hoff. I
3 think he will be an hour. I don't think we'll call back
4 Mr. Gentine. It's possible, depending on what comes in here,
5 but it will be very short.

6 MR. LINEHAN: Doug.

7 MR. SULKIN: Oh, and it possible, again, depending on
8 what happens, that Mr. Thomas will testify. Again, I think
9 that would be relatively short.

10 THE COURT: And Mr. Thomas is Bellingham Cold
11 Storage?

12 MR. SULKIN: Correct.

13 THE COURT: All right. That's still quite a bit of
14 stuff to get to.

15 MR. GOLDFARB: We have a full day tomorrow, I think.
16 But I think if we push --

17 THE COURT: You keep telling me it's little, and, you
18 know, you don't move like little, okay?

19 MR. SULKIN: No fire alarm.

20 THE COURT: The fire alarm took a little time away,
21 but not much.

22 MR. GOLDFARB: If it wasn't for that, your Honor.

23 THE COURT: If it wasn't for that, you'd be done,
24 huh? Okay. All right. Give me your offer of proof.

25 MR. SULKIN: What I want to do, your Honor, I was

1 going to put Mr. Gentine on to say that this is it. But
2 that's all right. I just want to provide this for the court
3 for the record. This, your Honor, is the mediator's
4 nonbinding recommendation, signed by Mr. Sullivan on June 20,
5 2008.

6 MR. GOLDFARB: I don't have any objection to the
7 making of the offer of proof, certainly. But --

8 THE COURT: So you are making an offer of proof. But
9 this is the mediator's nonbinding --

10 MR. SULKIN: Recommendation.

11 THE COURT: A "doesn't matter" recommendation?

12 MR. SULKIN: Exactly.

13 THE COURT: All right. You've told me that this is
14 what it is. Now, I don't know if you've completed your
15 record as to why it is you think you ought to be able to use
16 it.

17 MR. SULKIN: I think it goes to two issues, your
18 Honor. One, we believe it goes to the issue of our good
19 intent that we went to the mediation process and won. I
20 mean, I don't fault Mr. Goldfarb, but he keeps referring to
21 this. And I think what he's trying to do is to create the
22 impression that it was a positive result here.

23 THE COURT: Well, you don't get good intent from
24 winning. You get good intent from trying.

25 MR. SULKIN: Well, I don't know that that's right. I

1 mean, I think what we did was, we won, and we had a finding
2 by a mediator. We were right that there was no loss of
3 operational control.

4 Moreover, the contract itself, we would argue, the
5 shareholders in the March -- let me step back.

6 There are two issues going on here simultaneously. You
7 have the March 28th letter, which is the shareholders' letter
8 under 1.6(b). You then have the May 23rd letter, which is
9 under the employment agreement.

10 The employment agreement asserts good reason. 1.6(b)
11 asserts loss of operational control. And under that
12 provision, 1.6(b), I think it's double ii, the remedy, we've
13 argued to you -- and you denied it. I don't want to reargue
14 the motion, but I'm just explaining why we want it in.

15 The remedy, we believe, is this: We won under that
16 provision. And, therefore, certainly the shareholders'
17 claims should be thrown out. And so we're just putting this
18 in the record for that reason.

19 I'm not asking that it be admitted. We accept your
20 ruling, your Honor. But just in the case there's a verdict
21 against us, we want it in the record for the Court of
22 Appeals.

23 THE COURT: Anything you want to say, Mr. Goldfarb?

24 MR. GOLDFARB: Yes, your Honor. One is that we
25 briefed this to you in motions in limine. You granted the

1 motion. And I would reincorporate here on the record all of
2 the points that we set forth.

3 But I have one other sort of procedural concern. The
4 parties here have agreed that this was a confidential
5 mediation. They signed one of those agreements. Putting
6 this confidential mediator's recommendation in the court file
7 without sealing it has the effect of making it a public
8 record, directly contrary to the agreement of the parties
9 and, I think, Washington arbitration statutes. Although I
10 need to go back and check that before I represent it to the
11 court. But I think that's correct.

12 And so we don't think it should come in at all. We think
13 you've ruled on it. But to the extent you were going to
14 embrace it in the court record, it shouldn't be made into a
15 document that would be accessible to the public.

16 THE COURT: Okay. Well, let's understand what we're
17 doing. I thought we were marking it as an exhibit, one that
18 the court was going to refuse based upon prior rule. It then
19 becomes an exhibit. The exhibits are not posted on the court
20 record. After the case is finished, after your time for
21 appeal has run, you get it all back. So it isn't open to the
22 public for review.

23 MR. GOLDFARB: Very good.

24 THE COURT: So is there some other safeguard that you
25 want me to use?

1 MR. GOLDFARB: No, there's not. I would just
2 reincorporate our substantive arguments, but I won't trouble
3 the court with making them again on the record here.

4 THE COURT: All right. I think we had a reporter
5 running at the time I made the prior ruling. But in case we
6 didn't, the contract called for a mediation. You went to a
7 mediator. You signed an agreement saying that it was
8 confidential. The mediator provided a nonbinding
9 recommendation to you. The court rule indicates that any
10 settlement discussions should not be brought before the
11 court.

12 And so as I see it, I'm enforcing what it is you agreed to
13 do, which is keep it to yourselves. And whether or not the
14 mediator sided with one side or the other, once you bring it
15 to a jury trial, doesn't have any influence on that. And
16 I've let you put into the record that you fulfilled the steps
17 that you were to take. Whether you followed the mediator's
18 recommendations or not is neither here nor there.

19 So maybe someday, a different time, a different place,
20 you'll explain to me why anybody would pay for a nonbinding
21 mediation. But that's not for me to decide.

22 MR. SULKIN: I'm not sure I could either. The only
23 other request I would have, your Honor, is to get back my
24 marked up, ugly Calliari transcript. I'll bring you a clean
25 one tomorrow.

1 THE COURT: I think I gave it back.

2 MR. SULKIN: Did you give it back? Thank you. I
3 appreciate it.

4 THE COURT: Yes, I don't want it either.

5 All right. So let's give this a number, please.

6 THE CLERK: 289.

7 THE COURT: All right. 289 has been offered and
8 rejected for the reasons stated.

9 Okay. Anything else we need to take care of before
10 tomorrow?

11 MR. GOLDFARB: If we were to finish, hypothetically,
12 tomorrow with the evidence and whatever tweaks there were on
13 the documents, just in terms of time, when would the court
14 want to sit down and talk about that, or would the court want
15 to do that at all?

16 THE COURT: Oh, talk about the tweaks on your jury
17 instructions?

18 MR. GOLDFARB: Yes.

19 THE COURT: Well, I mean, I can't do it at the same
20 time I'm running a trial. So, you know, we would finish. We
21 would figure out a time to do it. You know, I can't remember
22 whether there's a lunch hour -- I think I have a meeting
23 tomorrow during lunch tomorrow. So we just have to find some
24 time to do it.

25 MR. GOLDFARB: It's just that it would be easier to

1 get the closing argument thoughts together if we knew.

2 THE COURT: I have another pretrial conference coming
3 up tomorrow at 4 o'clock. So we'll find the time to do it.
4 Maybe we're going to do it Friday morning. Maybe you're
5 going to tell me you don't have any changes.

6 MR. GOLDFARB: It's possible. If we got this done
7 mid-afternoon, could we work in a few minutes tomorrow
8 afternoon, if the evidence was concluded?

9 THE COURT: I don't know what you mean.

10 MR. GOLDFARB: If we get all the testimony in
11 tomorrow before your pretrial conference, that might be a
12 window for us to address this.

13 THE COURT: What, are you worried I'm going to go hit
14 a bucket of balls or something instead of working with you?
15 Counsel, I'm going to work straight through, okay? I'll be
16 getting here early in the morning, and I'm sitting here with
17 you all today. I've only got so many hours. But you have
18 them all until 4 o'clock tomorrow.

19 When I've got the crew in, please don't tell them that you
20 finished early, because I bumped their trial because you told
21 me you weren't going to finish early.

22 MR. SULKIN: Not a peep.

23 THE COURT: Not a peep. All right. Have a good
24 evening. We'll see you tomorrow.

25 (Proceedings adjourned.)

C E R T I F I C A T E

I, Kari McGrath, CCR, CRR, RMR, Official Court Reporter for the United States District Court in the Western District of Washington at Seattle, do hereby certify that I was present in court during the foregoing matter and reported said proceedings stenographically.

I further certify that thereafter, I have caused said stenographic notes to be transcribed under my direction and that the foregoing pages are a true and accurate transcription to the best of my ability.

/S/ KARI McGRATH

Kari McGrath, CCR, CRR, RMR

Official Court Reporter